

**Board of Review
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Member
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Issue ID: 0069 6800 08

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny benefits following his separation from employment on or around June 10, 2021. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On November 24, 2021, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on December 14, 2022, the review examiner reversed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, he was disqualified under G.L. c. 151A, § 25(e)(1).

Ruling of the Board

After considering the recorded testimony and the evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights. However, we disagree with the review examiner's decision to subject the claimant to a full disqualification from the receipt of benefits.

We note information contained in the DUA's UI Online record keeping database, which shows that the claimant filed a claim for unemployment benefits effective May 23, 2021. Because the claimant began working for the instant part-time employer on March 31, 2021, this constitutes base period employment. We further note that the DUA has determined that the claimant is eligible for benefits based on a non-disqualifying separation from his primary employer, which occurred on May 20, 2021.

When a claimant separates from a part-time base period employer during his benefit year for disqualifying reasons under G.L. c. 151A, § 25(e), he is not rendered ineligible for his entire weekly benefit amount. Rather, he is merely subject to a constructive deduction from his weekly benefit rate. *See* 430 CMR 4.76(1)(a)(2) and 430 CMR 4.78(1)(b).

We, therefore, affirm the part of the review examiner's decision which concluded that the claimant's separation from the instant employer during the week beginning June 6, 2021, was

disqualifying under G.L. c. 151A, § 25(e)(1).¹ However, we reverse the portion of the decision which subjected the claimant to a full disqualification from the receipt of benefits. The claimant is only subject to a constructive deduction from his weekly benefit amount.



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 27, 2023

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws, Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

JMO/rh

¹ In the hearing decision, the review examiner cited June 10, 2021 as the “period beginning” date. As this date falls on a Thursday, we believe that this is a mere typographical error and have modified the decision accordingly.