

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0073 1915 52

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 the claimant benefits following her separation from employment on October 1, 2021. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On November 9, 2021, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed the determination, and both parties participated in the hearing. In a decision rendered on January 29, 2022, the review examiner affirmed 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, was disqualified under G.L. c. 151A, § 25(e)(1). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision that the claimant's separation from employment is disqualifying 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 take administrative notice of the information contained in the DUA UI Online System, which shows that the instant employer was part-time subsidiary employment during the base period of the claimant's 2021 claim, which has an effective date of September 26, 2021. We further take administrative notice of the claimant's eligibility for benefits based on her separation from her primary employer on September 28, 2021.

Because the instant employer was a part-time subsidiary employer during the base period of the claim, and the claimant has been approved for benefits based on her prior separation from her primary employer, the disqualifying separation here does not render the claimant ineligible for her entire weekly benefit amount. The claimant is subject to a constructive deduction, rather than a complete denial of benefits pursuant to 430 CMR 4.76(1)(b).

The claimant's constructive deduction shall be calculated pursuant to 430 CMR 4.78(1)(a), which provides as follows:

If the claimant's separation from part-time subsidiary work occurred in the last four weeks of employment prior to filing of the unemployment claim; the average part-time earnings will be computed dividing the gross wages paid by the subsidiary employer in the last completed quarter by 13. If there are less than 13 weeks of work, then the gross earnings shall be divided by the actual number of weeks worked.

The DUA's electronic record-keeping system, UI Online, shows that the claimant earned gross wages of \$858.01 with the instant employer during her last completed quarter prior to filing her unemployment claim. Applying the calculation method contained in 430 CMR 4.78(1)(a), her average weekly wage during that quarter was \$66.00. Accordingly, \$66.00, minus the earnings disregard, shall be deducted from the claimant's weekly benefit amount. Since the claimant's earnings disregard is \$220.67, the constructive deduction shall be in the amount of \$0.00.

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 ending October 2, 2021, was disqualifying. 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 in the amount of \$0.00, which does not modify her weekly benefit amount.

We note that the agency will investigate the claimant's availability pursuant to G.L. c. 151A, § 24(b), which may affect the claimant's eligibility for benefits as of the start of her claim on September 26, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 21, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SVL/rh