

**Claimant quit his part-time, subsidiary job eight weeks prior to filing a claim for benefits based upon a separation from his primary, full-time employer. Because he separated from his part-time job more than four weeks prior to filing his claim for benefits, he is not subject to loss of benefits.**

**Board of Review  
100 Cambridge Street, Suite 400  
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 3065 27**

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant quit his position with the employer on August 6, 2021. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 11, 2022. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on November 5, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left his employment in good faith to accept an offer of full-time employment and, thus, was entitled to receive benefits under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, as well as the DUA's electronic record-keeping system, UI Online.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was entitled to receive benefits when he voluntarily quit his part-time job for full-time work, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant worked part-time as a clerk for the instant employer, a supermarket, from May 9, 2021, until August 6, 2021.
2. The claimant worked 20–35 hours per week for the instant employer and earned \$17 per hour.

3. Prior to working for the instant employer, the claimant worked full-time seasonally for a resort (the Resort).
4. In approximately May 2021, the claimant's hours with the Resort were reduced to approximately 40 hours per week.
5. The claimant earned \$21.50 per hour from the Resort.
6. In August 2021, the Resort offered the claimant an increase in hours to 65 hours per week to begin on approximately August 1, 2021.
7. The claimant accepted the increase in hours from the Resort.
8. On August 6, 2021, the claimant quit his job with the instant employer to return to working increased hours for the Resort.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, while we agree with the review examiner's conclusion, we affirm on separate grounds.

Because the claimant resigned from his employment, his eligibility for benefits is properly analyzed pursuant to G.L. c. 151A, § 25(e), which provides, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) For the period of unemployment next ensuing . . . after the individual has left work (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary...

However, no disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

These statutory provisions expressly assign the burden of proof to the claimant.

The findings reflect that the claimant quit his part-time employment on August 6, 2021, so that he could continue to work, with increased hours, for his full-time primary employer. *See Findings of Fact ## 1, 3, and 8.* The review examiner concluded that the claimant met his burden under the

provisions above, which states that he left his employment in good faith to accept new employment on a permanent full-time basis and then became separated from such new employment for good cause attributable to the new employing unit. We disagree.

Nothing in the findings demonstrates that this was permanent full-time employment. The review examiner's statement that he worked for this full-time employer seasonally suggest that it was not permanent full-time employment. *See* Finding of Fact # 3. Nor are there findings from which we can conclude that he separated from that full-time employer for good cause attributable to the employer. Moreover, the findings do not suggest that the claimant separated from that employer due to urgent, compelling, and necessitous circumstances or for good cause attributable to the employer.

However, even if we were to disqualify the claimant under G.L. c. 151A, § 25(e)(1), the separation would not render him ineligible for benefits.

Here, the claimant was working his part-time job concurrently with his full-time job during the base period of his unemployment claim.<sup>1</sup> *See* Findings of Fact ## 1, 3, 4, and 6. This means that his part-time job was subsidiary employment. *See* 430 CMR 4.73. It also means that the full-time job was his primary employment.

When a claimant separates from subsidiary part-time employment under a disqualifying circumstance under G.L. c. 151A, § 25(e), we must consider whether a constructive deduction, rather than a complete disqualification from receiving unemployment benefits should be imposed. 430 CMR 4.76 provides, in relevant part, as follows:

(1) A constructive deduction as calculated under, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than a complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under G.L. c. 151A, § 25(e), in any of the following circumstances:

(a) if the separation is:

1. from subsidiary, part-time work during the base period, and at the time of the separation, the claimant knew or had reason to know of an impending separation from the claimant's primary or principal work; . . .

Because the findings indicate that the full-time job for the resort was seasonal in nature, we can reasonably infer that he knew that he would separate from that job at the end of the season.

However, 430 CMR 4.78 (1) provides as follows:

a. 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

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<sup>1</sup> The base period of the claimant's 2021-01 unemployment claim was from October 1, 2020-September 30, 2021.

weeks of work, then the gross earnings shall be divided by the actual number of weeks worked.....

Thus, 430 CMR 4.78 (1)(a) imposes a constructive deduction under 430 CMR 4.76 (1)(a)1, only if the disqualifying separation occurred within the last four weeks prior to filing a claim for benefits. The DUA has taken the position that “a disqualifying separation from subsidiary, part-time employment, more than four weeks before the filing of a claim for benefits based on a separation from the primary employer or principal employment, has no effect on the claim as the part-time employer would not be considered an interested party.”<sup>2</sup>

The claimant separated from his part-time subsidiary employment on August 6, 2021. *See* Finding of Fact # 8. The DUA’s electronic record keeping system, UI Online, shows that the claimant filed a claim for benefits following his separation from his primary employer on October 8, 2021, eight weeks after separating from the part-time subsidiary employer. Since his separation from the instant part-time subsidiary employer was more than four weeks prior to filing his claim, no constructive deduction or loss of benefits maybe imposed due to that separation. In short, his separation from the instant employer, even if disqualifying under G.L. c. 151A, § 25(e), has no effect on his claim for unemployment benefits.

We, therefore, conclude as a matter of law that the claimant has failed to show that his separation from the instant employer met the eligibility requirements under G.L. c. 151A, § 25(e). We further conclude that, pursuant to 430 CMR 4.78(1)(a) and DUA’s policy in UIPP 2014.05, the claimant is not subject to a loss of benefits.

We affirm the review examiner’s decision. The claimant is entitled to receive benefits for the week beginning August 6, 2021, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 14, 2023**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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)**

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<sup>2</sup> *See* DUA’s UI Policy and Performance Memorandum (UIPP) 2014.05 (May 29, 2014), p. 3.

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](http://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.

DY/rh