

**Board of Review
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Michael J. Albano
Member**

Issue ID: 0073 9636 22

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. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from the employer on March 22, 2021, and re-opened an existing claim for benefits. On March 30, 2022, the agency initially determined that the claimant's unemployment benefits were subject to a constructive deduction based upon her separation from the employer. The claimant appealed and the claimant and the employer's agent attended the hearing. In a decision rendered on August 11, 2022, the review examiner affirmed the agency determination that the claimant voluntarily left employment but imposed a full disqualification 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 agree that the claimant's separation from this employer subjects her to a disqualification of benefits pursuant to G.L. c. 151A, § 25(e)(1), as this portion of the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.¹

However, because the claimant's work for the employer was part-time benefit year employment, this disqualifying separation from the employer merely subjects her to a constructive deduction, not a full disqualification of benefits. 430 CMR 4.76(a)2. As noted in the DUA's March 30, 2022, determination, the claimant remains eligible for partial benefits.

¹ We note that, during the hearing, the review examiner failed to enter any documents into the record as exhibits. However, we decline to remand this case for an additional hearing solely to address this omission, as it is a procedural error that does not affect the outcome of our decision. The sworn testimony provides substantial evidence to support the review examiner's ruling, and there is nothing in these other documents which detracts from this testimony.

The review examiner's decision is affirmed in part and reversed in part. The claimant's benefits are subject to a constructive deduction only beginning the week ending March 27, 2021, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 28, 2023



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.

MR/rh