

The Board held that the claimant separated from employment for disqualifying reasons under G.L. c. 151A, § 25(e), where he left a part-time job to accept a full-time temporary job. However, because the claimant has separated from a part-time job during the benefit year, he is only subject to a constructive deduction under 430 CMR 4.76(1)(a)(2), not a total disqualification from benefits.

**Board of Review
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Michael J. Albano
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Issue ID: 0076 3467 48

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

The claimant resigned from his position with the employer on April 30, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 27, 2022. The claimant 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 denied benefits in a decision rendered on August 13, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment to accept a full-time, temporary position and thus, was disqualified under G.L. c. 151A, § 25(e). We considered the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for benefits, is supported by substantial and credible evidence and is free from error of law, where the findings of fact indicate that the claimant quit his part-time job to accept full-time work that was temporary. Additionally, we consider whether the claimant's separation subjects him to a constructive deduction rather than a total disqualification.

Findings of Fact

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

1. The claimant worked part time, [four] hours per week, as a boiler technician for the employer, a landscaping and property management company, from November 2014 to 4/30/2021.

2. The claimant was paid \$21.00 per hour by the employer.
3. The claimant left his job with the employer to accept a full-time job with another employer (Employer B).
4. The claimant started working full time, seven days a week, for Employer B on or about 4/19/2021.
5. The job with Employer B was a contract job that was supposed to last into the late fall of 2021.
6. The claimant was paid \$60.00 per hour by Employer B.
7. The job with Employer B ended early on or about 7/4/2021 because the job was completed.

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. While the review examiner's findings of fact support the conclusion that the claimant's separation from the employer disqualifies him from receiving benefits, he is subject only to a constructive deduction rather than a complete disqualification of all benefits.

Since the claimant resigned to accept another position, this case is properly analyzed pursuant to the following provision under G.L. c. 151A, § 25(e), which states, in pertinent part, as follows:

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.

The findings provide that the claimant quit his part-time position with the employer to accept a new, full-time job. However, the full-time job was for a limited time, scheduled from April, 2021, until the fall of 2021. *See* Finding of Fact # 5. Because the job was never intended to be permanent, the claimant does not qualify for benefits under this statutory provision.

However, when a claimant separates from part-time employment, we must consider whether a constructive deduction, not a full disqualification, should apply. 430 CMR 4.76 provides, in relevant part, the following:

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under M.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; or
2. if the separation from part-time work occurs during the benefit year. . . .

The DUA's electronic record-keeping system, UI Online, shows that the claimant's benefit year ran from February 7, 2021, through February 5, 2022. As the findings show that the claimant separated from the part-time job on April 30, 2021, this was a benefit year separation. *See* Finding of Fact # 1. Because he separated from part-time work during the benefit year, he is subject to a constructive deduction under 430 CMR 4.76(1)(a)(2).

The amount of the constructive deduction each week is determined by the claimant's earnings from the part-time employer. 430 CMR 4.78(1)(c) provides as follows:

On any separation from part-time work which is obtained after the establishment of a benefit year claim, the average part-time earnings will be computed by dividing the gross wages paid by the number of weeks worked.

UI Online further shows that, during the benefit year, the claimant's total gross wages for the employer were \$1,491.00, and he worked for approximately 11 weeks. Thus, his average weekly wage was \$135.50. Finally, UI Online shows that the claimant's weekly benefit amount was \$855.00, and his earnings disregard was \$285.00. Given that the average weekly wage was less than the earnings disregard, in effect, the constructive deduction is \$0.

We, therefore, conclude as a matter of law that the claimant did not leave employment in good faith to accept new employment on a permanent, full-time basis pursuant to G.L. c. 151A, § 25(e), when he quit his permanent part-time position with the employer to accept a temporary job. We further conclude that the claimant is subject to a constructive deduction, rather than a complete disqualification from benefits pursuant to 430 CMR 4.76(1)(a)(2).

The review examiner's decision is affirmed as to the disqualifying separation under G.L. c. 151A, § 25(e). However, we reverse the total disqualification from benefits. Beginning the week of May 2, 2021, the claimant shall be subject to a constructive deduction until he meets the requalifying provisions under 430 CMR 4.75(2) and (3). Inasmuch as the constructive deduction here is zero, this means that the claimant's weekly benefit amount is not reduced.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 21, 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