

**Board of Review  
19 Staniford St., 4<sup>th</sup> 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: 0076 5866 39**

### 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 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 affirm.

On May 5, 2022, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties participated in the hearing. In a decision rendered on January 10, 2023, the review examiner reversed the agency determination, concluding that the claimant was discharged from her employment, and she did not engage in deliberate misconduct in wilful disregard of the employer's interest, or knowingly violate a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). The Board accepts the employer'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 employer's appeal, we conclude that the review examiner's decision to award benefits is based on substantial evidence. However, in our view, the decision was decided under the incorrect section of law, and this error has affected the employer's substantive rights. The review examiner analyzed the claimant's separation under G.L. c. 151A, § 25(e)(2), and concluded that the separation was the result of a lack of work. We disagree with this analysis. After the claimant's work location closed, the employer offered her work at other locations, which the claimant was unable to accept due to a childcare conflict. Thus, we conclude that the claimant left her employment for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(1). We further conclude that she took reasonable steps to preserve when she discussed her circumstances with her supervisor, who was unable to offer the claimant an accommodation.

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week ending October 1, 2021, and for subsequent weeks if otherwise eligible. Charges from the employer's account should be removed consistent with G.L. c. 151A, § 14(d)(3).



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 15, 2023**



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)**

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.

SVL/rh