

The claimant quit her subsidiary, part-time job with the instant employer for reasons that rendered her ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1). However, at the time she quit, she had no knowledge of her impending layoff from her primary, full-time job. Given the intent of the DUA’s constructive deduction regulations at 430 CMR 4.71 – 4.78, the Board held that she is not subject to any loss of benefits due to leaving this part-time job.

**Board of Review
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Issue ID: 0077 4433 73

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 her position with the employer on June 1, 2022. She filed a claim for unemployment benefits with the DUA, effective June 26, 2022, which was denied in a determination issued on July 22, 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 January 6, 2023. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without showing that she resigned for good cause attributable to the employer or due to urgent, compelling, and necessitous reasons, and, thus, she was disqualified under G.L. c. 151A, § 25(e)(1). After considering the recorded testimony and evidence from the hearing, the review examiner’s decision, and the claimant’s appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 to receive any unemployment benefits, where she quit her part-time job with the employer for personal reasons, then lost her full-time job five weeks later without notice and filed her claim, 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 for the instant employer, (ER 1) a gym, as a personal trainer, from January 1, 2022 to June 1, 2022. The claimant was paid

\$35.00 per hour, and worked between 2 - 4 hours per week, scheduled independently by clients.

2. The claimant has been employed full-time for a medical company (ER 2) as a representative, since November of 2021, with a salary of \$95,000 per year.
3. Approximately the first week in May of 2022, the claimant informed ER 1 that her commute to [City A] for her primary employment was not allowing her enough time or energy to get home and prepare for her evening personal training clients. The claimant gave notice to ER 1 that she would be leaving her personal training job as of June 1, 2022.
4. The claimant's last day of work with ER 1 was 6/1/22.
5. At the time of separation, the claimant was not subject to any disciplinary action.
6. Work was available for the claimant at the time of separation.
7. On July 7, 2022, the claimant was notified by ER 2 that she and numerous other employees were being laid-off effective immediately. The claimant was not informed of any impending cuts to staff or layoffs within the company prior to the announcement.
8. On July 8, 2022, the claimant filed for Unemployment Insurance (UI) benefits with an effective date of June 26, 2022. The weekly benefit amount was \$907 with an earnings disregard of \$302.33.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not eligible for benefits.

The review examiner properly analyzed the claimant's separation from the instant employer pursuant to G.L. c. 151A, § 25(e)(1), which provides, in relevant 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.

Under this statutory provision, the claimant has the burden to show that she separated for good cause attributable to the employer or urgent, compelling, and necessitous reasons.

We agree with the review examiner that the claimant did not show that she left for good cause attributable to the employer, as nothing in the record indicates any unreasonable action by the employer that caused her to resign. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (when a claimant contends that the separation was for good cause attributable to the employer, the focus is on the employer’s conduct and not on the employee’s personal reasons for leaving).

Finding of Fact # 3 provides that the claimant left because she felt that she did not have enough time or energy to prepare for her personal training clients due to a commute for a different job. While this may have been a wise personal decision, we agree that it does not rise to an urgent, compelling, and necessitous circumstance. *See Reep v. Comm’r of Department of Employment and Training*, 412 Mass. 845, 848, 851 (1992) (the Board must evaluate “the strength and effect of the compulsive pressure of external and objective forces” on the claimant to ascertain whether the claimant “acted reasonably, based on pressing circumstances, in leaving employment.”).

Nonetheless, given the nature of her employment with the instant employer and the circumstances around the subsequent loss of her full-time job, the claimant is still entitled to receive benefits.

Findings of Fact ## 1 and 2 show that, during her base period,¹ she earned about \$70–\$140 per week working for the instant employer at the same time that she held down a full-time job for a medical company at \$95,000 per year. This means that the claimant’s part-time job as a personal trainer for the instant employer was subsidiary to her primary, full-time job with the medical company. *See* 430 CMR 4.73–4.75.

When a claimant separates from subsidiary part-time employment, we must consider whether a constructive deduction, rather than a full disqualification of benefits, 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. . . .

¹ The base period of the claimant’s unemployment claim was from April 1, 2021, to March 31, 2022.

Given the facts of this case, this regulation does not impose a constructive deduction. Although the claimant quit her subsidiary part-time job and then separated from her primary full-time job several weeks later, the review examiner found that, at the time the claimant quit,² she had no knowledge of her impending separation from her full-time job. Finding of Fact # 7. Therefore, a constructive deduction, pursuant to 430 CMR 4.76(1)(a)1, cannot be imposed.³

In Board of Review Decision 0011 4858 86 (Jun. 19, 2014), we declined to impose any disqualification at all in situations like this. We explained that 430 CMR 4.76(1)(a) is designed to penalize individuals who choose to leave gainful part-time employment knowing that they are about to lose their full-time job. We stated, “it would be an anomaly to interpret the regulation to mean that an individual who quits a part-time job without knowledge of an impending separation from his full-time work receives the even harsher penalty of a full disqualification.” Id.

We, therefore, conclude as a matter of law that the claimant failed to meet the eligibility requirement to show that she resigned her position with the employer for good cause attributable to the employer or urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e). We further conclude that the review examiner’s decision to fully disqualify the claimant from receiving any benefits is based on an error of law, because the claimant quit her part-time, subsidiary job with the employer with no knowledge of her impending separation from her full-time job. She is entitled to her full weekly benefit amount.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week beginning May 29, 2022, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 31, 2023



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**

² The claimant’s separation from the instant employer on June 1, 2022, was technically after the base period, during what DUA refers to as the lag period, the period between the base period and filing a claim. However, this distinction does not affect our decision.

³ A constructive deduction cannot be imposed pursuant to any of the other provisions of 430 CMR 4.76 either. The other circumstances in which it can be imposed are if the separation from the part-time work happens in the benefit year or if the separation from the part-time work occurs after the separation from the full-time job. Neither circumstance occurred in this case.

(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.

AB/rh