

**The claimant was discharged from employment for giving a resignation notice. As this was not misconduct, he was eligible for benefits pursuant to G.L. c. 151A § 25(e)(2). However, starting from the date of his planned resignation, the claimant was ineligible for benefits under G.L. c. 151A § 25(e)(1).**

**Board of Review  
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**Issue ID: 0078 3005 31**

### 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 we affirm in part and reverse in part.

The claimant separated from his position with the employer on September 16, 2022. He filed a claim for unemployment benefits with the DUA, effective September 18, 2022, which was denied in a determination issued on October 12, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on February 7, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant did not violate a policy or rule of the employer, nor engage in deliberate misconduct in wilful disregard of the employer's interest and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was eligible for benefits because he was discharged for giving his two-week resignation notice, 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 employer is a food delivery application company. The claimant worked as a product sales manager from November 15, 2021, until September 16, 2022.
2. In September 2022, the claimant was offered and accepted a position with a different employer.

3. On September 16, 2022, the claimant informed his supervisor that he was leaving.
4. The claimant initially intended to leave immediately but was asked by the supervisor to work two weeks' notice [sic]. The claimant agreed.
5. At 11:14 a.m., the claimant submitted a written resignation via e-mail to his supervisor with the two-week notice period.
6. In the afternoon of September 16, 2022, the claimant met via Zoom with the employer Human Resources.
7. On September 16, 2022, the claimant was discharged.
8. The employer discharged the claimant because he had submitted his resignation.
9. The claimant started work with the new employer on October 10, 2022.

### 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, we agree the claimant was eligible for benefits but only for a short period of time.

The findings show that the claimant was discharged on September 16, 2022. *See* Finding of Fact # 7. For this reason, we analyze the claimant's eligibility for benefits pursuant to G.L. c. 151A, § 25(e)(2), as of the week beginning September 18, 2022. However, the record shows that he planned to resign from the employer on September 30, 2022.<sup>1</sup> Thus, we analyze his eligibility for benefits pursuant to G.L. c. 151A, § 25(e)(1), as of the week beginning October 2, 2022, which is the week the claimant's resignation would have taken effect had he been allowed to work out his notice period. *See* Board of Review Decision 0002 4012 73 (June 20, 2014).

First, we address the claimant's discharge from employment. The relevant statute, G.L. c. 151A § 25(e)(2), 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate

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<sup>1</sup> The claimant's resignation date, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

misconduct in willful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence . . . .

“[T]he grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee's right to benefits, and the burdens of production and persuasion rest with the employer.” Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

As a threshold matter, the employer must show that the claimant's termination was attributable to some sort of misconduct or rule violation. Here, there is no evidence that the claimant did anything wrong. The claimant notified his supervisor on September 16, 2022, that he was quitting immediately to accept a position with a different employer. Findings of Fact ## 2 and 3. His supervisor asked him if he would work for two more weeks, and the claimant agreed to do so. Finding of Fact # 4. Later that day, the claimant was called into a meeting with the employer's human resources and was discharged for giving his resignation notice. Findings of Fact ## 7 and 8. Submitting a two-week notice of resignation is not misconduct, particularly in this case, where he was simply complying with his supervisor's request. There is also nothing in the record to suggest the claimant violated a rule or policy of the employer. Therefore, we agree with the portion of the review examiner's conclusion that the claimant did not engage in deliberate misconduct in willful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced policy or rule of the employer.

The claimant intended to work for the duration of his two-weeks' notice, and he intended to resign on September 30, 2022, because he had accepted a new position with another employer which started on October 10, 2022. Findings of Fact ## 2, 4, 5, and 9. Considering these facts, the claimant's separation from employment as of September 30, 2022, is deemed to be voluntary and his eligibility for benefits is properly analyzed under G.L. c. 151A, § 25(e)(1).

Thus, we next address whether the claimant is eligible for benefits as of the date of his resignation pursuant to the following separate provisions under G.L. c. 151A § 25(e), which state, in relevant part:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for the period of unemployment next ensuing and until the individual has had at least eight weeks of work and has earned an amount equivalent to or in excess of 8 times the individual's weekly benefit amount 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 . . .

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 provisions expressly place the burden on the claimant to show that he is eligible to receive unemployment benefits.

Because the facts before us do not indicate that the claimant quit for reasons related to the employer's actions, he has not quit for good cause reasons attributed to the employer. *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). As there is also nothing in the record that shows his new job was a permanent, full-time position or that he subsequently separated from that job for good cause attributable to the new employer, the claimant does not qualify for benefits pursuant to the latter provision above.

We, therefore, conclude as a matter of law that the claimant was eligible for benefits for the two weeks following his discharge by the employer pursuant to G.L. c. 151A § 25(e)(2). We further conclude that the claimant was ineligible for benefits pursuant to G.L. c. 151A § 25(e)(1), as of his planned resignation date.

The review examiner's decision is affirmed in part and reversed in part. The claimant is eligible for benefits for the weeks beginning September 18, 2022, and September 25, 2022, if otherwise eligible. The claimant is ineligible for benefits for the week beginning October 2, 2022, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 31, 2023**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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.

MR/rh