

Board of Review
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Issue ID: 0078 3296 03

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 his separation from employment on May 18, 2022. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On October 14, 2022, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on February 4, 2023, the review examiner affirmed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was disqualified 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 conclude that the review examiner's decision that the claimant's separation from employment is disqualifying under G.L. c. 151A, § 25(e)(1), is based on substantial evidence and is free from any error of law affecting substantive rights. However, we disagree with the review examiner's decision to subject the claimant to a full disqualification from the receipt of benefits. We note that the information in the DUA UI Online system shows that the claimant filed a claim for unemployment benefits effective May 1, 2022. Because the claimant began working for the instant part-time employer on May 4, 2022, this employment constitutes benefit year employment.

When a claimant separates from a part-time benefit year employer during his benefit year for disqualifying reasons under G.L. c. 151A, § 25(e), he is not rendered ineligible for his entire weekly benefit amount. Rather, he is merely subject to a constructive deduction from his weekly benefit rate. *See* 430 CMR 4.76(1)(a)(2) and 430 CMR 4.78(1)(c). Here, based on the earnings information and the dates of employment in the findings, the claimant's average weekly part-time earnings were \$281.00. Accordingly, \$281.00, minus the earnings disregard, shall be deducted from the claimant's weekly benefit amount. Since the claimant's earnings disregard is \$181.67, the constructive deduction shall be in the amount of \$99.00.

We, therefore, affirm the part of the review examiner's decision which concluded that the claimant's separation from the instant employer during the week ending May 21, 2022, was disqualifying under G.L. c. 151A, § 25(e)(1). However, we reverse the portion of the decision

which subjected the claimant to a full disqualification from the receipt of benefits as of May 15, 2022.

The claimant is only subject to a constructive deduction from his weekly benefit amount in the amount of \$99.00 from the week beginning May 1, 2022, through the benefit year end date of April 29, 2023.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 29, 2024



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
(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.

SVL/rh