

**The claimant's reasons for separating from this employer had no bearing on her eligibility for benefits. Since the claimant had at least eight weeks of work with another employer prior to filing his claim, the present employer was not an interested party under G.L. c. 151A, § 38(b), and the claimant may not be denied benefits pursuant to G.L. c. 151A, § 25(e) based on that separation.**

**Board of Review  
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**Issue ID: 0078 8080 79**

### 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 reverse.

The claimant separated from her position with the employer on June 11, 2022. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 14, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on May 11, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined 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). 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 claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is ineligible for benefits, as she had not met her burden to show she left her employment for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons when she failed to accept further shifts, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant started working as a patient observer for the employer, a company that contracts with hospitals to provide such services, on 3/2/22.

2. The claimant chose which shifts to work by logging onto the employer's scheduling app and viewing available shifts.
3. The claimant lived in [City A], Massachusetts during her employment with this employer.
4. Shifts from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. at four hospitals in [City A], five hospitals in [City B], and 5 hospitals in [Region] of Massachusetts were available to the claimant during her employment.
5. The claimant worked two to four shifts per week on average during her employment.
6. The last shift the claimant worked was on 6/11/22.
7. The claimant did not accept any shifts after 6/11/22 and ceased all contact with the employer after that date.
8. The equivalent of full-time hours was available for the claimant to work after 6/11/22.

### 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. We further believe the review examiner correctly concluded that the claimant did not meet her burden to show that she voluntarily separated from the employer with good cause attributable to the employer, or for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(1). However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is ineligible to receive benefits on this claim.

Under G.L. c. 151A, § 38(b), the DUA must give notice of a claim to the claimant's most recent employing unit and to such other employers as the DUA shall prescribe. The DUA has prescribed that interested party employers include those employers from whom a claimant became separated during the last eight weeks of employment prior to the effective date of her benefit year claim. Pursuant to this policy, a claimant's eligibility under G.L. c. 151A, § 25(e), will only be based upon her separation from interested party employers.

This policy is consistent with the eight-week disqualification period, which the Legislature embedded into G.L. c. 151A, § 25, which states:

[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 and until the individual has had at least eight weeks of work . . . 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, (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable 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. . . .

(Emphasis added.)

Thus, an individual who separates from a prior employer and immediately files an unemployment claim may be disqualified under G.L. c. 151A, § 25(e)(1) or (2), depending upon the circumstances of that separation. However, what transpired with this former employer cannot be disqualifying, if that individual subsequently performs eight weeks of work for another employer and then files a claim. The DUA has no interest in the prior employer's separation, because it has no bearing on whether the claimant is entitled to benefits under G.L. c. 151A, § 25.

A review of the claimant's profile in UI Online, the DUA's electronic recordkeeping system, shows the claimant filed her claim for benefits on December 11, 2022, with an effective date of December 11, 2022. As reflected in the findings of fact, this claim was opened more than 26 weeks after the claimant's separation from the instant employer on June 11, 2022. Further, UI Online records confirm that, after separating from the instant employer, the claimant worked for two other employers through at least September 30, 2022. As DUA records show the claimant did not work for the instant employer during the last eight weeks of employment prior to filing her claim, the employer is not an interested party employer.

We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 25(e), based upon her separation from this employer, because it was not an interested-party employer pursuant to G.L. c. 151A, § 38(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of June 5, 2022, and for subsequent weeks, if otherwise eligible.

**N.B.:** UI Online indicates that the claimant separated from interested party employers shortly before filing her claim. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits based on these separations under the provisions of G.L. c. 151A, § 25(e).



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 15, 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](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.

LSW/rh