

The claimant's reasons for separating from this employer had no bearing on his 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).

**Board of Review
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Issue ID: 0079 4339 30

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 his position with the employer on October 9, 2022. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 24, 2023. 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 April 27, 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 voluntarily quit without good cause attributable to the employer because he resigned after starting a new full-time job, 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 was employed as a security guard by the employer, a security company, from September 13, 2022, until October 9, 2022.
2. The claimant worked part-time at games and events at a Massachusetts stadium.
3. On or about October 1, 2022, the claimant secured new full-time employment and decided not to continue working in the security guard position.

4. On October 9, 2022, the claimant worked his scheduled shift and verbally told his immediate supervisor he was leaving, and later sent a text to that supervisor. The claimant however did not inform human resources or scheduler, who continued to schedule him through October 24, 2022.
5. The claimant voluntarily left his position because of a new job.

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 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 the claimant became separated during the last eight weeks of employment prior to the effective date of his benefit year claim. Pursuant to this policy, a claimant's eligibility under G.L. c. 151A, § 25(e), will only be based upon his 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, a separation from a former employer will not prevent the claimant from receiving benefits, 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 that the claimant filed his claim for benefits on February 22, 2023, with an effective date of February 19, 2023. As reflected in the findings of fact, this claim was opened more than 18 weeks after the claimant's separation from the instant employer on October 9, 2022. Finding of Fact # 3 indicates that the claimant began working for a new employer in a full-time capacity on or before October 1, 2022, and UI Online records confirm that he continued to work for this new employer until his separation on February 13, 2023. Since the claimant did not work for the instant employer during the last eight weeks of employment prior to opening his 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 his 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 beginning February 19, 2023, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 14, 2023



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

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