

**Board of Review
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Issue ID: 0080 3658 18

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 her benefits following her separation from employment on May 19, 2023. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On July 6, 2023, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed and both parties attended the hearing. In a decision rendered on August 16, 2023, the review examiner reversed 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).

Ruling of the Board

After considering the recorded testimony and the evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision 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 DUA's UI Online record keeping database (UI Online) shows that the claimant filed a claim for unemployment benefits effective May 14, 2023. Because the claimant separated from this employer on May 19, 2023, her separation took place during the benefit year. We further note that, on July 1, 2023, the DUA had determined that the claimant is eligible for benefits based on a non-disqualifying separation from her primary, full-time employer, which occurred on May 13, 2023.

When a claimant separates from a part-time employer during her benefit year for disqualifying reasons under G.L. c. 151A, § 25(e), she is not rendered ineligible for her entire weekly benefit amount. Rather, she is merely subject to a constructive deduction from her weekly benefit rate. *See* 430 CMR 4.76(1)(a)(2).

UI Online records also show that the claimant worked only one week during her benefit year, the week beginning May 14, 2023, and reported that she earned \$250.00 while working for the instant employer. It further shows that the claimant has a weekly benefit amount of \$874.00 with an earnings disregard of \$291.33 under this claim. Pursuant to the constructive deduction calculation under 430 CMR 4.78(1)(b), the claimant's average weekly gross wages in the benefit year are

divided by the number of weeks worked after filing the claim. Upon calculation, the claimant's average weekly wage is \$250 (\$250 x 1 week = \$250 per week). Thus, she would be subject to a constructive deduction of \$250 per week. However, since this amount is lower than her earnings disregard (\$291.33), there is no reduction to the claimant's weekly benefit amount.

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 beginning May 14, 2023, was disqualifying under G.L. c. 151A, § 25(e)(1).¹ We reverse the portion of the decision which subjected the claimant to a full disqualification from the receipt of benefits. The claimant is only subject to a constructive deduction from her weekly benefit amount, which amount is zero.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 22, 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

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.

JMO/rh

¹ In the hearing decision, the review examiner cited May 19, 2023 as the "period beginning" date. As this date falls on a Friday, we believe that this is a mere typographical error and have modified the decision accordingly.