

Claimant quit her part-time job without good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). However, because she quit her part-time job in the benefit year, she was subject to a constructive deduction. Held the claimant has met the requalifying events under 430 CMR 4.76(2), and the imposition of the constructive deduction ended when she filed her new claim for benefits.

**Board of Review
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Issue ID: 0080 9449 15

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 we affirm in part and reverse in part.

The claimant had filed a claim for unemployment benefits with the DUA, effective August 14, 2022, (2202-01 claim), which was approved. Subsequently, the claimant separated from her part-time position with the instant employer on May 6, 2023, and reopened her previously filed unemployment claim on July 9, 2023. In a determination issued on August 30, 2023, the DUA denied benefits. 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 October 4, 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 for 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, as well as the DUA's electronic record keeping system, UI Online.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was subject to a complete disqualification of benefits when she voluntarily quit her part-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 worked as a Cashier for the employer, a supermarket, from 1/14/23 until she separated from the employer on 5/6/23.

2. The claimant was hired to work part time, 12 hours a week, earning \$15.00 an hour.
3. The claimant left work after being spoken to by the Front-End Manager.
4. On or about 4/30/23, an employee who was bagging groceries for the claimant informed the Front-End Manager that she was not sure if the claimant was ok because she was throwing grocery items towards her while she was bagging and was injured as a result.
5. The Front-End Manager watched the claimant and witnessed her being rude and getting upset with customers. The Manager called the claimant off the register to the front of the store. The Manager asked the claimant if everything was ok. The claimant said she was stressed out. The Manager told the claimant her behavior is not allowed. He told her she cannot make everyone happy, but she cannot be rude to customers.
6. The Front-End Manager had also received a customer complaint regarding the claimant's behavior on the day in question.
7. Approximately a week later, the claimant spoke to a different Front-End Manager and told him she wanted to be taken off the schedule. The claimant was told if and when she wanted to return, she could reapply.
8. Prior to her leaving, the claimant had not received any disciplinary action.
9. The employer does not offer a leave of absence. The employer separated the claimant's employment on 5/6/23 when she did not return to work.

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 except as follows. The Board rejects Finding of Fact # 3, as it is misleading, indicating that the claimant left work immediately after being spoken to by the front-end manager, when it was undisputed that the claimant had completed her shift after she had been spoken to by the front-end manager.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, while we agree with the review examiner's legal conclusion, we do not agree that the claimant is subject to a total disqualification from receiving benefits based upon her separation from this employer.

Because the claimant voluntarily left her employment, this case is properly analyzed pursuant to

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

G.L. c. 151A, § 25(e)(1), which provides, in pertinent 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 (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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under the above statutory regulation, the claimant has the burden of proof to show that she left her employment for good cause attributable to the employing unit or its agent or for urgent, compelling, and necessitous reasons. We conclude that the claimant has not met her burden.

During the hearing, the claimant asserted that she asked her employer to remove her from the schedule, because she did not like how she was treated by the front-end manager, believed that she was working in a hostile environment, and was stressed out from working her full-time job while simultaneously balancing two part-time jobs.²

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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Here, the front-end manager witnessed the claimant being rude to a customer and gave her a verbal warning that her conduct was not acceptable. See Finding of Fact # 5. We agree with the review examiner that the employer's action was reasonable, especially since the employer, a supermarket, is in the business of providing customer service. See Finding of Fact # 1.

Although the claimant may have had an emotional response to being disciplined, we see no evidence in the record to suggest that the workplace had become a hostile environment. An employee's general and subjective dissatisfaction with working conditions does not provide good cause to leave employment under G.L. c. 151A, § 25(e)(1). Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979). Thus, we agree with the review examiner's conclusion that the claimant has not presented any evidence that her reason for leaving was for good cause attributable to the employer, nor has the claimant submitted any evidence to indicate that her separation from this employer was for urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e)(1).

Even if we were to assume, *arguendo*, that the claimant had good cause attributable to the employer to leave, she must make a reasonable attempt to correct the situation or show that her efforts would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). In this case, without warning, the claimant informed her employer that she wished to be removed from the work schedule for an unspecified length of time. See Finding of Fact # 7. Since the claimant did not give the employer a chance to address any of her work-related concerns before

² This portion of claimant's testimony is also part of the unchallenged evidence introduced at the hearing.

she chose to leave, she has failed to show that she had taken reasonable steps to preserve her employment or that her efforts would have been futile.

However, our analysis does not stop there. Because the claimant separated from this part-time job for disqualifying reasons under G.L. c. 151A, § 25(e)(1), we must determine if the claimant would be subject to a full disqualification of benefits or a constructive deduction. *See* Finding of Fact # 2.

430 CMR 4.76 provides, in relevant part, the following:

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under M.G.L. c. 151A, § 25(e), in any of the following circumstances:

(a) if the separation is:

1. from subsidiary, part-time work during the base period and, at the time of the separation, the claimant knew or had reason to know of an impending separation from the claimant's primary or principal work; or

2. if the separation from part-time work occurs during the benefit year. . . .

The DUA's electronic record-keeping system, UI Online, shows that the claimant's 2022-01 claim benefit year ran from August 14, 2022, through August 12, 2023. Because the claimant separated from this part-time job on May 6, 2023, it was a benefit year separation. *See* Finding of Fact # 1. Inasmuch as she separated from part-time work during the benefit year, she is subject to a constructive deduction under 430 CMR 4.76(1)(a)(2).

The amount of the constructive deduction each week is determined by the claimant's earnings from the part-time employer. 430 CMR 4.78(1)(c) provides as follows:

On any separation from part-time work which is obtained after the establishment of a benefit year claim, the average part-time earnings will be computed by dividing the gross wages paid by the number of weeks worked.

UI Online further shows that, during the benefit year, the claimant's total gross wages for the employer were \$1,560.00, and she worked for approximately 16 weeks. Thus, her average weekly wage was \$97.50. Finally, UI Online shows that the claimant's weekly benefit amount was \$858.00, and her earnings disregard was \$286.00. Given that the average weekly wage was less than the earnings disregard, in effect, the constructive deduction is \$0.

However, the constructive deduction would only be imposed for a limited duration. Since the claimant separated from the part-time instant employer on May 6, 2023, she filed a subsequent claim for benefits, her 2023-01 claim. Pursuant to 430 CMR 4.76(2), a constructive deduction will no longer be imposed when a claimant files a new claim for benefits or earns requalifying

wages, *i.e.* has had at least 8 weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the claimant's weekly benefit amount. The effective date of her new claim for benefits is August 13, 2023. Because the claimant met the requalifying events under 430 CMR 4.76(2), the constructive deduction ended on August 12, 2023.

We, therefore, conclude as a matter of law that the claimant is disqualified pursuant to G.L. c. 151A, § 25(e)(1), based upon her separation from the instant employer. We further conclude that the claimant is subject to a constructive deduction, rather than a complete disqualification from receiving benefits pursuant to 430 CMR 4.76(1)(a)(2).

We affirm the review examiner's decision under G.L. c. 151A, § 25(e)(1). We reverse the part of the review examiner's decision which concluded that the claimant was subject to a total disqualification from the receipt of benefits. The claimant is subject to a constructive deduction for the period beginning May 7, 2023, until August 12, 2023, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 28, 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.

DY/rh