

**Board of Review
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Issue ID: 0081 0031 73

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. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant separated from the employer on August 13, 2023, and re-opened an existing claim for benefits. On September 20, 2023, the agency initially determined the claimant was not entitled to benefits. The claimant appealed, and the claimant and the employer attended the hearing. In a decision rendered on October 28, 2023, the review examiner affirmed the agency determination that the claimant voluntarily left employment and imposed a \$225 constructive deduction 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 claimant's separation from this employer subjects him to total disqualification of benefits pursuant to G.L. c. 151A, § 25(e)(1), rather than a constructive deduction. The review examiner incorrectly applied a constructive deduction in this matter. We reach this conclusion because the record before us establishes that the instant employer is the only interested party employer as defined in the applicable DUA regulations. *See* 430 CMR 4.78(1).

Even if we assume, *arguendo*, that a constructive deduction did apply, the claimant would not be paid on the claim. This is because the record further establishes that the constructive deduction of \$225 would exceed the claimant's weekly benefit amount. *See* 430 CMR 4.78(1)(a). Thus, the review examiner imposition of a constructive deduction was a harmless error.

The review examiner's decision is affirmed in part and reversed in part. We affirm the review examiner conclusion that the claimant quit his position under disqualifying circumstances pursuant to G.L. c. 151A, § 25(e)(1). We reverse the review examiner's imposition of a constructive deduction. The claimant's is subject to a total disqualification for the week beginning August 13, 2023, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2024



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.

MR/rh