

The claimant separated from a subsidiary, part-time employer during his base period because he wanted to focus on his full-time job and spend more time with his family. Although this separation is disqualifying pursuant to G.L. c. 151A, § 25(e)(1), his reasons for resigning confirm he had no reason to know that he would soon be laid off from his primary employer. Pursuant to the Board's interpretation of the intent of 430 CMR 4.76(1), he is neither subject to a constructive deduction nor any denial of benefits.

Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member

Issue ID: 0081 4262 06

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 separated from his position with the employer on October 9, 2023. He filed a claim for unemployment benefits with the DUA, effective November 5, 2023, which was denied in a determination issued on November 25, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 24, 2024. 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 was not entitled to benefits because he resigned to spend more time with his family and to focus on his full-time job with his other employer, 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 employer is a store. The claimant worked part-time, 5–20 hours per week, as a Sales Associate for the employer from 12/22/2022 to 10/9/2023.

2. While working part-time for the employer, the claimant also had a full-time job with a different employer (Employer B).
3. The claimant worked full-time as a project manager for Employer B and earned a salary of approximately \$80,000.00 per year.
4. The claimant gave his notice to the employer on 9/29/2023 that his last day of work would be 10/13/2023.
5. The claimant's last day on the schedule for the employer was 10/9/2023.
6. The claimant left his job with the employer because he wanted to focus more on his full-time job with Employer B and spend more time with his family.
7. The claimant was laid off from his full-time job with Employer B on 11/3/2023.

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 not eligible to receive unemployment benefits.

Because the claimant resigned from his position with the instant employer, his eligibility for benefits is governed by 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 these statutory provisions, the claimant has the burden of showing that he is entitled to benefits.

The claimant chose to resign from his position with the instant employer because he wanted to spend more time with his family and wanted to focus on his full-time job with his other employer. Finding of Fact # 6. As the claimant's reasons for resigning related solely to his personal choices about his time and availability, we agree with the review examiner's legal conclusion that the claimant has not shown that he quit for good cause attributable to the employer. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (to establish good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's

personal reasons for leaving). Further, as there was no indication that circumstances beyond the claimant's control compelled him to resign his position with the instant employer, we agree with the review examiner's legal conclusion that the claimant did not resign his position with the instant employer for urgent, compelling, and necessitous reasons. *See Reep v. Comm'r of Department of Employment and Training*, 412 Mass. 845, 848 (1992) (citation omitted) (urgent, compelling, and necessitous reasons may be found where the facts of the case show that "the strength and effect of the compulsive pressure of external and objective forces" compelled the claimant's resignation).

However, our analysis does not end here. The review examiner's findings of fact provide that the claimant worked part-time for the employer while he also worked at another, full-time job. Finding of Fact # 2. This means that the claimant's position with the instant employer was subsidiary base period employment, and his other job was his primary base period employment.

When a claimant separates from subsidiary part-time employment, we must consider whether a constructive deduction, rather than a full disqualification, should apply. 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. . . .

Because the claimant resigned from his position with the instant employer in part because he wanted to have more time to focus on his full-time work for his primary employer, we can reasonably infer that he had no reason to know that he would soon be laid off from that job. *See Findings of Fact ## 6 and 7.* Therefore, a constructive deduction pursuant to 430 CMR 4.76(1)(a)(1), cannot be imposed.

Consistent with previous Board decisions addressing similarly situated claimants, we decline to impose any disqualification at all. *See Board of Review Decision 0011 4858 86* (Jun. 19, 2014). In this decision, we considered the apparent purpose of the above constructive deduction regulation and stated the following:

Subsection (1)(a)(1) is . . . designed to penalize an individual who chooses to leave gainful part-time employment when he knows he is about to lose his full time employment. The penalty, however, is a partial, not a complete, reduction of benefits. Clearly, then, it would be an anomaly to interpret the regulation to mean that an individual who quits a part-time job without knowledge of an impending separation from his full-time work receives the even harsher penalty of a full disqualification. Faced with a choice between this inequitable — or even illogical

— construction and a more reasonable one that comports with both the beneficial purposes of the unemployment compensation statute and the express purpose of the specific regulations under scrutiny, we adopt the reasonable construction. We conclude that the claimant should not be penalized at all but instead be eligible for full benefits.

For the same reason, the claimant in the present appeal should not be denied benefits.

We, therefore, conclude as a matter of law that the review examiner correctly concluded that the claimant failed to meet his burden to show he separated from the instant employer for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(1). We further conclude that, because this was a separation from subsidiary part-time, base period employment and the claimant had no reason to know of an impending separation from his primary employer, he may not be disqualified from receiving benefits pursuant to the language and intent of 430 CMR 4.76(1).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week beginning November 5, 2023, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 10, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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