**Board of Review**
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**Issue ID: 0082 0175 17**

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 January 2, 2024. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On February 3, 2024, the agency determined that the claimant was not entitled to receive unemployment benefits. The claimant appealed and attended the hearing. In a decision rendered on April 10, 2024, the review examiner affirmed 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). We accepted the claimant's application for review.

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 full disqualification from the receipt of benefits.

Because the claimant separated from this part-time job for disqualifying reasons under G.L. c. 151A, § 25(e)(1), we consider 430 CMR 4.76, which 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. . . .

We take note of the information contained in the DUA's UI Online record-keeping database (UI Online), which shows that the claimant filed a claim for unemployment benefits, effective October 8, 2023. We also note that the DUA has determined that the claimant is eligible for benefits based on a non-disqualifying separation from her primary employer, which occurred on October 6, 2023. UI Online records as well as the findings in the hearing decision further establish that the claimant began working for the instant part-time employer on December 1, 2023, and separated on January 2, 2024, during her benefit year. Because the claimant 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:

> 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.

Here, based on the earnings information and dates of employment referenced in the findings of fact, the claimant's average weekly part-time earnings were $390.00 ($26/hour x 15 hours/week, for 4 weeks). Accordingly, $390.00, minus the earnings disregard of $41.33, shall be deducted from the claimant's weekly benefit amount.

However, the constructive deduction is only imposed for a limited duration. 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. UI Online records show that, as of April 6, 2024, the claimant earned sufficient requalifying wages. Because the claimant met the requalifying events under 430 CMR 4.76(2), the constructive deduction ended on April 6, 2024.

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 December 31, 2023, was disqualifying under G.L. c. 151A, § 25(e)(1).[1] However, 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. After the week ending April 6, 2024, the claimant is entitled to her full weekly benefit amount, if otherwise eligible.



**BOSTON, MASSACHUSETTS**
**DATE OF DECISION - May 30, 2024**

Paul T. Fitzgerald, Esq.
Chairman

[1] In the hearing decision, the review examiner cited January 2, 2024, as the "period beginning" date. As this date falls on a Tuesday, we believe that this is a mere typographical error and have modified the decision accordingly.



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