Board of Review
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Issue ID: 0082 9159 46

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 her separation from employment on May 20, 2024. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On June 22, 2024, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on August 31, 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). 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 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:
>
> 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 April 21, 2024. 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 April 25, 2024, and separated on May 20, 2024, during her benefit year. Because the claimant separated from part-time work during her 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.

Records submitted to the DUA by the employer show it paid the claimant gross wages totaling $1,912.50. Based on this information, the claimant's average weekly part-time earnings were $478.13 (total gross wages of $1,912.50 divided by 4 weeks worked). Accordingly, $478.13, minus the claimant's earnings disregard of $64.00, shall be deducted from 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 on May 20, 2024, was disqualifying under G.L. c. 151A, § 25(e)(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 of $414.13 from her weekly benefit amount.

Charlene A. Stawicki

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 30, 2024

Charlene A. Stawicki, Esq.
Member

Michael J. Albano
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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