

**Board of Review
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Issue ID: 0083 0450 69

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 December 23, 2023. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm in part and reverse in part.

On July 17, 2024, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on September 18, 2024, the review examiner reversed the agency determination, concluding 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). 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 September 10, 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 October 10, 2023,

and separated on December 23, 2023, 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 \$1,647.00. Based on this information, the claimant's average weekly part-time earnings were \$164.70. (Total gross wages of \$1,647.00 divided by 10 weeks worked). Finally, UI Online shows that the claimant's weekly benefit amount was \$565.00, and her earnings disregard was \$188.33. Given that the claimant's average weekly wage was less than her earnings disregard, in effect, the constructive deduction is \$0.00.

We, therefore, affirm the part of the review examiner's decision which concluded that the claimant's separation from the instant employer was disqualifying under G.L. c. 151A, § 25(e)(1). However, we reverse the portion of the decision that subjected the claimant to a full disqualification from the receipt of benefits. Beginning week ending November 11, 2023, the claimant is only subject to a constructive deduction from her weekly benefit in the amount of \$0.00, each week until she meets the requalifying provisions under 430 CMR 4.76(2) and (3). In effect, this means that the claimant will receive her full weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 16, 2025



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.

DY/rh