

**Board of Review  
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**Issue ID: 0083 1535 23**

### 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 July 7, 2024. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On August 16, 2024, the agency determined that the claimant was entitled to receive unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on September 17, 2024, the review examiner reversed the agency determination, concluding that the claimant was not discharged by the employer and had voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons. Thus, the claimant was disqualified under G.L. c. 151A, § 25 (e)(1).

### 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 believe that the review examiner's conclusion that the claimant did not show she quit for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons, 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 January

14, 2024. We also note, that, since a disqualifying separation from her primary employer on January 28, 2024, the DUA determined that the claimant has requalified for benefits by earning eight weeks of sufficient wages as of July 6, 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 22, 2024, and separated on July 7, 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, the claimant's final paycheck, which was admitted into evidence as Exhibit 7, shows the employer paid the claimant gross wages totaling \$5,612.62.<sup>1</sup> Based on this information, the claimant's average weekly part-time earnings were \$510.24 (total gross wages of \$5,612.62 divided by 11 weeks worked). Accordingly, \$510.24, minus the earnings disregard of \$130.00, 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 during the week beginning July 7, 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 \$ 380.24 from her weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 28, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

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<sup>1</sup> Exhibit 7, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

**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](http://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