

The claimant owned and worked for a corporation, then sold it. Her reasons for selling and separating from this employer had no bearing on her eligibility for benefits because she subsequently had at least eight weeks of work with another employer prior to filing her claim. The instant employer was not an interested party under G.L. c. 151A, § 38(b), and the claimant may not be denied benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0083 7974 09

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 reverse.

The claimant filed a claim for unemployment benefits with the DUA, effective September 22, 2024, which was denied in a determination issued on October 11, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on November 23, 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 did not show that financial circumstances compelled her to sell the instant employer business because it was profitable in 2021 and 2023, 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 claimant worked full-time for the employer, an incorporated tax accounting service. The claimant was paid \$1,400.00 per week.
2. The date of incorporation was January 1, 2019.

3. The claimant was the President, Treasurer, Secretary, and Director of the corporation.
4. The claimant held 100% of the corporation's stock.
5. For calendar year 2021, the employer had retained earnings of \$43,286.06.
6. For calendar year 2022, the employer, due to COVID-19, had a retained earnings loss of \$14,305.33.
7. The employer agreed to sell the business for the sum of \$325,000.00 to another tax accounting firm (TAF).
8. The business was sold to TAF.
9. The employer granted TAF a mortgage in the amount of \$300,000.00.
10. The employer's retained earnings of \$66,000.00 for 2023 was transferred to TAF.
11. The claimant, pursuant to the sales agreement, was retained in a full-time position with TAF.
12. On July 15, 2024, the claimant separated from TAF.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. There appears to be a typographical error in Finding of Fact # 12, which states, in relevant part, that the claimant separated from her subsequent employer on July 15, 2024. Consistent with the uncontested evidence in the record, we believe that the review examiner intended to find that the claimant separated from her subsequent employer on August 16, 2024. In adopting the remaining findings, we deem 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 ineligible to receive benefits on this claim.

Under G.L. c. 151A, § 38(b), the DUA must give notice of a claim to the claimant's most recent employing unit and to such other employers as the DUA shall prescribe. The DUA has prescribed that interested party employers include those employers from whom a claimant became separated during the last eight weeks of employment prior to the effective date of her benefit year claim. Pursuant to this policy, a claimant's eligibility under G.L. c. 151A, § 25(e), will only be based upon her separation from interested party employers.

This policy is consistent with the eight-week disqualification period, which the Legislature embedded into G.L. c. 151A, § 25, which states:

[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 and until the individual has had at least eight weeks of work . . . 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, (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to . . . a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. . . .

(Emphasis added.)

Thus, an individual who separates from a prior employer and immediately files an unemployment claim may be disqualified under G.L. c. 151A, § 25(e)(1) or (2), depending upon the circumstances of that separation. However, what transpired with this former employer cannot be disqualifying if that individual subsequently performs eight weeks of work for another employer and then files a claim. The DUA has no interest in the prior employer's separation, because it has no bearing on whether the claimant is entitled to benefits under G.L. c. 151A, § 25.

In this case, the claimant sold the instant employer to another tax accounting firm (firm) at the end of 2023. Findings of Fact ## 8 and 10. After the sale was completed, the other firm retained the claimant as a full-time employee. Finding of Fact # 11. Because the claimant worked for the other firm until she separated on July 15, 2024, she did not work for the instant employer during the last eight weeks of employment prior to filing her claim. *See* Finding of Fact # 12. Thus, the instant employer is not an interested party employer.

We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 25(e), based upon her separation from this employer, because it was not an interested-party employer pursuant to G.L. c. 151A, § 38(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of September 22, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 4, 2025



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