

Although the claimant's layoff entitled him to benefits, the employer's account will not be charged, because the claimant subsequently had at least eight weeks of work for another employer prior to filing his claim.

**Board of Review
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Issue ID: 0083 9588 17

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award the claimant benefits following his separation from employment on February 27, 2024. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On November 20, 2024, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and only the employer attended the hearing. In a decision rendered on December 20, 2024, the review examiner affirmed the agency determination, concluding that the claimant's job ended when the employer laid him off for lack of work and, thus, he was not disqualified under G.L. c. 151A, § 25(e)(2). The Board accepted the employer's application for review and provided the parties with an opportunity to submit written reasons for agreeing or disagreeing with the review examiner's decision. Only the employer responded.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer'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.

The review examiner correctly concluded that the claimant separated from the employer without engaging in deliberate misconduct in wilful disregard of the employer's interest or due to a knowing violation of a reasonable and uniformly enforced rule or policy. G.L. c. 151A, § 25(e)(2).

However, we note that the employer appellant has not been subject to any benefit charges. The claimant's benefit charges are associated with his primary employer.

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 the claimant became separated during the last eight weeks of employment prior to the effective date of his benefit year claim. Pursuant to this policy, a claimant's eligibility under G.L. c. 151A, § 25(e), will only be based upon his 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 is not 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.

The claimant's UI Online profile shows that the claimant filed his present unemployment claim (2024-01) with the DUA on October 9, 2024, with an effective date of October 6, 2024. This claim was opened more than 32 weeks after the claimant's separation from the instant employer on February 27, 2024. Additionally, the record shows that the claimant worked for his primary employer from September 10, 2021, until his separation on October 3, 2024. Since the claimant did not become separated from the instant employer during the last eight weeks of employment prior to opening his 2024-01 claim, the 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 his separation from this employer, because it was not an interested-party employer within the meaning of G.L. c. § 38(b).

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 7, 2025



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

MM/rh