

Where the employer had not yet determined whether the claimant had violated its policy, but it had placed her on suspension merely to investigate the matter, it had not suspended her for fixed period of time, and it had not given her a right to return, it was improper to disqualify the claimant pursuant to G.L. c. 151A, § 25(f). Pursuant to G.L. c. 151A, §§ 29 and 1(r), the claimant was eligible for benefits while she was suspended.

Board of Review
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Issue ID: 352-MN3V-HTTK

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 was placed on a suspension by the employer on April 8, 2025. She filed a claim for unemployment benefits with the DUA, effective April 6, 2025, which was denied in a determination issued on July 9, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on August 15, 2025. We accepted the claimant's application for review.

Benefits were denied pursuant to G.L. c. 151A, § 25(f), after the review examiner determined that the claimant was suspended for violating an established employer policy, and the suspension lasted less than ten weeks. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not entitled to benefits during her suspension period, 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 was employed as a bartender with the employer, a restaurant, from 10/10/24 through 4/5/25. She worked about 25–38 hours per week.
2. The employer has a policy that prevents any actions that cause an adverse reaction to their business.

3. The purpose of the policy is to protect the employer's business from harm.
4. The policy is written in the handbook, which the claimant received at hire.
5. On or about Friday, 4/4/25, the employer terminated a long-term employee.
6. Employees, including the claimant, were upset with the termination and decided to stage a walk-out the following day.
7. A designated employee called the employer and told them that the group was going to call out absent on Saturday, 4/5/25, unless the terminated employee was reinstated.
8. The employer indicated they would not be recalling the terminated employee.
9. The group of employees then called out for their shifts.
10. The claimant was scheduled to work at 4:30 p.m., on Saturday, 4/5/25.
11. At 1:34 p.m., the claimant called the employer and told them that she was not going to work her shift. She told them she was not working because her sister, who lived in [City A], had learned she had cancer.
12. That afternoon around 6:00 p.m., the claimant met with her co-workers, who had staged the walk-out, and hung out with them.
13. The following day, the employer emailed the claimant and indicated they wanted to meet to discuss the situation that occurred on Saturday, 4/5/25.
14. On Tuesday, 4/8/25, the employer suspended the claimant. They notified her that she would be suspended while they investigated the situation that occurred on Saturday, 4/5/25. They told her that the investigation should take less than the week to conclude.
15. On , 4/14/25, the claimant was terminated for violation of company policy.

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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we believe that the review examiner's findings of fact support the conclusion that the claimant is entitled to benefits while suspended from her position with the employer.

Because the claimant was suspended from employment, the review examiner considered her eligibility for benefits under G.L. c. 151A, § 25(f), which states, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual pursuant to this chapter] . . . (f) For the duration of any period, but in no case more than ten weeks, for which he has been suspended from his work by his employing unit as discipline for violation of established rules or regulations of the employing unit.

G.L. c. 151A, § 25(f), is further interpreted in DUA regulations at 430 CMR 4.04(4), which provides, in pertinent part, as follows:

A claimant who has been suspended from his work by his employing unit as *discipline* for breaking established rules and regulations of his employing unit shall be disqualified from serving a waiting period or receiving benefits for the duration of the period for which he or she has been suspended, but in no case more than ten weeks, provided it is established to the satisfaction of the Commissioner that such rules or regulations are published or established by custom and are generally known to all employees of the employing unit, *that such suspension was for a fixed period of time* as provided in such rules or regulations, and that a claimant has a right to return to his employment with the employing unit if work is available at the end of the period of suspension.

(Emphasis added.)

Thus, the foregoing regulation interprets G.L. c. 151A, § 25(f), to disqualify a claimant only if the suspension was disciplinary in nature, the suspension was for a “fixed” period of time, and the claimant has a right to return to her employment at the end of that fixed period.

Here, Finding of Fact # 14 shows that the claimant was suspended pending investigation into the call-out situation that occurred on April 5, 2025. During the hearing, the employer’s witness, the human resources director, testified that the claimant was not initially suspended along with the rest of the call-out group, because management thought she was not part of that group, even though preliminary reports from the claimant’s coworkers confirmed that she supported the call-out and participated in it as a member of that group of employees. The employer’s witness also testified that she decided to suspend the claimant because she had not yet received enough information to determine if the reports were accurate, and because she wanted to treat all call-outs on 4/5/25 similarly.¹ Nothing in the record, including the employer’s unrefuted testimony, indicates that the claimant’s suspension was for disciplinary reasons.

In her decision, the review examiner noted that the claimant’s suspension lasted for one week, suggesting that the suspension period was “fixed,” rather than indefinite. We decline to adopt this

¹ While not explicitly incorporated into the review examiner’s findings, this portion of the employer’s testimony, as well as Exhibits 3, 5, and 10 referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

view. Based on the undisputed testimonies of both parties, the employer witness told the claimant on April 8, 2025, that the employer believed that the investigation process should be completed “within the week.” *See* Finding of Fact # 14. Because April 8, 2025, fell on a Tuesday, this would mean the employer would have needed to complete its investigation on or before Saturday, April 12, 2025, for it to have been completed within the week. However, the employer never testified that the investigation had been concluded by that date. There is also evidence in the record, in the form of an email, dated April 11, 2025, showing that the employer’s human resources director notified the claimant that she still needed to discuss the matter with all members of ownership, and that the earliest she could do so would be on Monday morning, April 14, 2025. *See* Exhibit 10.² By stating that the employer should complete its investigation “within the week,” we believe that the employer was merely offering the claimant an estimated timeframe for the investigative process, not communicating a fixed suspension period.

We also note that the review examiner failed to consider whether the claimant had a right to return to work at the end of her suspension period, as required under G.L. c. 151A, § 25(f). Although it is unclear from this record when the employer decided to discharge the claimant, we can reasonably infer that the employer reached this decision sometime during the claimant’s suspension period, as it never allowed her to return to work again after the suspension period began on April 8, 2025. *See* Findings of Fact ## 14–15.

Because the claimant’s suspension was not disciplinary, not for a fixed period of time, and did not provide to the claimant the right to return to work after the suspension, it was a legal error for the review examiner to deny benefits pursuant to G.L. c. 151A, § 25(f), in this case. Inasmuch as the claimant remained in an employment relationship with the employer during the relevant period, we consider the claimant’s eligibility under G.L. c. 151A, § 29(a), which authorizes benefits to be paid to those in total unemployment.

Total unemployment is defined at G.L. c. 151A, § 1(r)(2), which provides, in relevant part, as follows:

“Total unemployment”, an individual shall be deemed to be in total unemployment in any week in which he performs no wage-earning services whatever, and for which he receives no remuneration, and in which, though capable and available for work, he is unable to obtain any suitable work.

It is well settled that an individual may be eligible for benefits while on a leave of absence as long as she is capable of performing work and actively seeking other employment. *See Dir. of Division of Employment Security v. Fitzgerald*, 382 Mass. 159 (1980) (welder who was medically unable to perform her welding duties because of pregnancy was nevertheless in unemployment and eligible for benefits while on maternity leave, because there were other light duty jobs that she was capable of performing and she actively sought work). Because the claimant performed no wage-earning services for the employer, received no remuneration, and, as far as this record reflects, remained able and available to work during her indefinite suspension, the claimant was in total

² Exhibit 10 is the email, dated April 11, 2025, sent from the employer’s human resource director to the claimant.

unemployment within the meaning of §§ 29(a) and (1)(r). *See* Finding of Fact #14; *see also* Exhibits 3 and 5.³

We, therefore, conclude as a matter of law that the claimant is entitled to unemployment benefits pursuant to G.L. c. 151A, §§ 29 and 1(r), while she was suspended from her position with the employer.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning April 13, 2025, through April 19, 2025, if otherwise eligible.⁴



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 20, 2025



Michael J. Albano
Member

**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.

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³ Exhibits 3 and 5 are the employer's completed fact-finding questionnaires, dated April 23, 2025, and June 25, 2025, respectively, where the employer indicated that the claimant had been placed on an unpaid suspension.

⁴ Because the claim effective date is April 6, 2025, the claimant's statutory waiting period runs from April 6, 2025, through April 12, 2025. *See* G.L. c. 151A, § 23(b), which states, in pertinent part: "With respect to an individual in total unemployment . . . the waiting period shall commence on the Sunday immediately preceding the date of registration."

Additionally, the DUA's record-keeping database shows the agency disqualified the claimant on a separate eligibility (discharge) issue, Issue ID: 334-FFVF-V6KJ, from the week beginning April 20, 2025, and indefinitely thereafter. The agency's records further show that the Notice of Disqualification was issued on July 18, 2025, which, to date, has not been appealed by the claimant.