

Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member

Issue ID: 352-MN8D-P8LN

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 his separation from employment on June 13, 2025. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On July 16, 2025, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on August 16, 2025, the review examiner affirmed the agency determination, concluding that the claimant had 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). 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 conclusion that the claimant did not have a *bona fide* offer of new employment at the time he resigned from the instant employer 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 a 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 record-keeping database, which shows that the claimant filed a claim for unemployment benefits, effective May 4, 2025. These records, as well as the findings in the hearing decision, further establish that the claimant began working

for the instant employer part time on May 8, 2025, and separated on June 13, 2025, during his benefit year. Because the claimant separated from part-time work during his benefit year, he 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. The DUA regulation at 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 \$1,662.79. Based on this information, the claimant's average weekly part-time earnings from this employer were \$333.56. (Total gross wages of \$1,662.79 divided by five weeks worked.) Finally, the DUA's record-keeping database shows that the claimant's weekly benefit amount is \$780.00, and his earnings disregard is \$260.00. Subtracting the claimant's earnings disregard from his average weekly earnings from this employer, the claimant is subject to a constructive deduction of \$73.00 ($\$333.56 - \$260.00 = \72.56, rounded up to \$73.00).

We affirm the part of the review examiner's decision that 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 the week ending June 14, 2025, the claimant is subject to a constructive deduction from his weekly benefit in the amount of \$73.00, each week until he meets the requalifying provisions under 430 CMR 4.76(2) and (3).

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 31, 2025



Charlene A. Stawicki, Esq.
Member



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.

REB/rh