

Because the claimant resigned from his part-time, benefit year employment with the intention of moving out of state to work for a family member, and no other reason, his separation was disqualifying pursuant to G.L. c. 151A, § 25(e)(1). However, the review examiner erred by imposing a total disqualification on the claim. Board concluded the claimant's weekly benefit amount is subject only to a constructive deduction.

**Board of Review
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Issue ID: 352-MP94-P8D2

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 we affirm in part and reverse in part.

The claimant was discharged from his full-time employment on February 13, 2025. He filed a claim for unemployment benefits with the DUA, effective February 16, 2025, which was approved in a determination issued on April 30, 2025. The claimant subsequently resigned from his position with the instant part-time, benefit year employer on May 14, 2025. On August 8, 2025, the DUA issued a determination approving benefits with deductions.¹ The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties,² the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 6, 2025. 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 is disqualified from receiving benefits because he resigned with the intention to move out of state for personal reasons, is supported by substantial and credible evidence and is free of error of law.

¹ The determination, dated August 8, 2025, reads in pertinent part, "You are eligible for benefits with deductions." While describing this document and entering it into the record as Exhibit 4, the review examiner referred to it as a notice of disqualification.

² In his appeal to the Board of Review, the claimant alleged that employer had not attended the hearing. However, the hearing audio file confirms that the vice president of labor relations participated in the hearing on behalf of the employer.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant worked as a full-time leader for the employer, from March 12, 2025, through May 14, 2025, when he quit.
2. The claimant's pay rate was about \$24.00 per hour.
3. The claimant submitted two weeks' notice of his resignation to the employer because he intended to move to Kentucky.
4. The claimant was moving because his nephew informed him that he could work for his company in Kentucky and the house where he lived in Massachusetts was being sold.
5. The claimant decided not to move to Kentucky due to his wife's mother becoming ill.
6. The claimant quit because he intended to relocate to another state.

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. The portion of Finding of Fact # 1 that states that the claimant worked full-time is unsupported by the record. Both parties consistently reported to the DUA that the claimant worked an average of 20 hours per week on a part-time basis. *See* Exhibits 1 and 2.³ In addition, the employer provided unrefuted testimony that the claimant's job title was not that of leader, but rather building foreman, and testified that he began working for the employer on March 3, 2025, not March 12, 2025. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. While we agree with the review examiner that the claimant separated from his employment for disqualifying reasons, we disagree with her decision to subject the claimant to a full disqualification from the receipt of benefits.

Because the claimant resigned from his position with the employer, his separation is properly analyzed under the following provisions of G.L. c. 151A, § 25(e), which state, in pertinent part, as follows:

³ Exhibit 1 is the employment history separation questionnaire completed by both parties. Both parties reported the claimant did not work full-time and worked an average of 20 hours each week. Exhibit 2 is the claimant's benefit claim snapshot, in which the claimant reported that his position with the instant employer was not full-time. These responses align with the parties' respective testimonies during the hearing. We have supplemented the findings of fact, as necessary, here and below with the unchallenged evidence before the review examiner. *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).

[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 . . . 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were of such an urgent, compelling and necessitous nature as to make his separation involuntary.

The express language of these provisions places the burden of proof upon the claimant.

There is nothing in the record, including the claimant's testimony, to suggest that the employer did anything to cause the claimant to resign. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (to establish good cause attributable to the employer under G.L. c. 151A, § 25(e)(1), the focus is on the employer's conduct and not on the employee's personal reasons for leaving). Therefore, we need not address this issue further.

The question is whether he separated for urgent, compelling, and necessitous reasons. "[A] 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons under" G.L. c. 151A, § 25(e), "which may render involuntary a claimant's departure from work." *Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development*, 66 Mass. App. Ct. 759, 765 (2009), *quoting Reep v. Comm'r of Department of Employment and Training*, 412 Mass. 845, 847 (1992).

During the hearing, the claimant testified that he resigned because he had intended to move to Kentucky, as his nephew had told him he could work for his company there. Findings of Fact ## 3-4. The claimant testified that he also decided to relocate because the house in which he lived was in the process of being sold by the owner. *See Finding of Fact # 4.*

The facts in this case establish that the claimant made a personal decision to voluntarily leave his employment when he decided to relocate out of state. Although it is undisputed that the claimant also considered the fact that the house in which he lived was being sold when he decided to resign, there is insufficient information in this record to conclude that the claimant experienced any urgent, compelling, or necessitous circumstances that required him to quit his job when he did. While it is also undisputed that the claimant subsequently decided not to relocate because his wife's mother became ill, that does not change the fact that the claimant's decision to resign stemmed solely from his intention to relocate out of state and work for his nephew's company in Kentucky.

It is understandable that the claimant would want to relocate and work for a family member. However, there is no indication from this record that a failure to relocate out of state would cause the claimant a financial hardship that could constitute an urgent, compelling, and necessitous reason to leave employment. As a result, we do not believe that the factors that led to the claimant's decision to quit constitute the type of pressing circumstances that have been recognized as amounting to an urgent, compelling, and necessitous reason to leave employment.

Even assuming, *arguendo*, that the claimant has demonstrated urgent, compelling, and necessitous reasons to leave his job, "[p]rominent among the factors that will often figure in the mix when the

agency determines whether a claimant's personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant had taken such 'reasonable means to preserve [his] employment' as would indicate the claimant's 'desire and willingness to continue [his] employment.'" Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting Raytheon Co. v. Dir. of Division of Employment Security*, 364 Mass. 593, 597–98 (1974).

Based on the totality of the evidence, we do not believe that the claimant made any effort to preserve his employment. For example, in the claimant's own fact-finding responses to the DUA, he expressly stated that he made no attempts to preserve his employment prior to resigning. *See Exhibit 1.*⁴

Therefore, we agree with the review examiner's legal conclusion that the claimant failed to show that he resigned for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(1).

However, our analysis does not end here. The claimant's disqualifying separation from the instant part-time benefit year employer does not render him ineligible for his full weekly benefit amount.

When a claimant separates from part-time employment under a disqualifying circumstance under G.L. c. 151A, § 25(e), we must consider whether a constructive deduction, rather than a complete disqualification from receiving unemployment benefits, should be imposed. DUA regulations at 430 CMR 4.76 provide, in relevant part, as follows:

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than a complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under G.L. c. 151A, § 25(e), in any of the following circumstances:

(a) if the separation is:

1. from subsidiary, part-time work during the base period and, at the time of the separation, the claimant knew or had reason to know of an impending separation from the claimant's primary or principal work; or

2. if the separation from part-time work occurs during the benefit year; . . .

The DUA's record-keeping database confirms that the benefit year for the claimant's 2025 claim runs from February 16, 2025, through February 14, 2026. Information in the record shows that the claimant began working for the instant part-time employer on March 3, 2025, and that he separated from his employment on May 14, 2025. Thus, this was a benefit year separation. Inasmuch as the claimant separated from part-time work during the benefit year, he is subject to a constructive deduction under 430 CMR 4.76(1)(a)(2).

⁴ In the claimant's responses to the employment history separation questionnaire, he reported he made no attempts to preserve his job and indicated "no reason" for his failure to do so.

The amount of the constructive deduction each week is determined by the claimant's earnings from the part-time employer. The regulation at 430 CMR 4.78(1)(c), provides as follows:

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.

Further, 430 CMR 4.78(2), provides:

The constructive deduction shall be computed by applying the earnings disregard standards provided for in M.G.L. c. 151A, § 29(b) to the average partial earnings as calculated in 430 CMR 4.78(1)(a) through (c).

Based on information provided by both parties, the claimant earned an average weekly wage of \$478.00, and he worked for approximately eleven weeks. *See Exhibit 1.*⁵ The DUA's record-keeping database shows that the claimant's weekly benefit amount is \$721.00, and his earnings disregard is \$240.33. Accordingly, \$478.00, minus the earnings disregard of \$240.33, shall be deducted from the claimant's weekly benefit amount. Therefore, the claimant is subject to a constructive deduction in the amount of \$237.67 from his weekly benefit amount.

We, therefore, conclude as a matter of law that the claimant is disqualified from receiving benefits pursuant to G.L. c. 151A, § 25(e)(2), based upon his separation from the employer. We further conclude that the claimant is subject to a constructive deduction, rather than a full disqualification of his total weekly benefit amount pursuant to 430 CMR 4.76(1)(a)(2).

The review examiner's decision is affirmed in part and reversed in part. Beginning the week of May 11, 2025, the claimant is subject to a constructive deduction each week from his weekly benefit amount until he meets the requalifying provisions under 430 CMR 4.76(2) and (3).

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 31, 2025



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⁵ In the employment history separation questionnaire, the claimant reported that he earned \$499.89 per week, while the employer reported that the claimant earned, on average, \$478.00 per week. We apply the amount provided by the employer to this constructive deduction analysis based on the presumption that it is derived from payroll records kept in the normal course of business, and because applying this amount results in the claimant receiving a slightly higher benefit amount each week.

**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.

JMO/rh