

Board of Review
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Issue ID: 0002 1161 65

BOARD OF REVIEW DECISION

0002 1161 65 (Nov. 13, 2013) – Where claimant left her employment for another job without a *bona fide* offer of new full-time permanent employment, and the new job fell through, she was ineligible for benefits. The new employer did not provide a start date or starting salary, did not give her anything in writing offering her a new job, and only had her fill out employment forms which could be used by the new employer if she was to be offered the new job.

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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant resigned from her position with the employer on August 30, 2012. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 20, 2012. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on February 20, 2013.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment in good faith to accept new employment on a permanent, full-time basis, after which she became separated from that new employment for good cause attributable to the new employer. Thus, she was not disqualified under G.L. c. 151A, § 25(e). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to take additional evidence regarding the new full-time work. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the claimant left her job to accept new employment on a full-time, permanent basis, where the new employer did not give the claimant a start date, did not tell her what her salary would be, did not give the claimant anything in writing offering her a new job, and only had her fill out employment forms which could be used by the new employer if she was to be offered the new job.

Findings of Fact

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

1. The claimant was employed as a full time RN/case manager for the employer, a family services agency, from July 11, 2011 until August 30, 2012.
2. The claimant worked thirty five (35) hours a week, which is considered to be full time employment with the employer.
3. The claimant's job was not in jeopardy.
4. The claimant had difficulties working with another employee and told the program director on an unknown date that she would be leaving her job as soon as she could find a position elsewhere.
5. The claimant had always been told by her father that she should never leave a job unless she had another job to go to and she heeded his words.
6. The claimant remained working with the employer although she had difficulties with a coworker because she had not secured a new job.
7. On an unknown date in the beginning of August, 2012, the claimant was verbally offered a full time, permanent position with another company, [A], located on [Address], Massachusetts.
8. The position was that of an RN/home care nurse manager.
9. During her one (1) hour interview with a nursing supervisor, the claimant was required to complete paperwork allowing the employer to process a CORI check and contact her references.
10. Per the Department of Criminal Justice Info Systems, an employer may not execute a CORI check unless a job offer has been made to that individual.
11. The claimant did not discuss what she would be paid by the new employer during her interview. The claimant knew that the salary for the position was universal at a rate ranging between \$60K and \$68K and she was willing to accept the position based on the typical pay range for the job.
12. The claimant was not given anything in writing from the new employer regarding the terms of her new employment.
13. The claimant told the nursing supervisor for [A] that she would begin to work for the company as soon as she could, but that she would need to give her current employer a two (2) week notice. The claimant agreed to begin working for the new employer the first week of September, 2012.

14. Immediately following her interview, the claimant was introduced to the Director of Nursing for the homecare division, physical and occupational therapists, nurses and nurses' aides.
15. After having met the staff, the claimant concluded that she had the job.
16. The claimant submitted a letter of resignation to human resources on August 13, 2012, notifying her employer that her last day of work would be August 30, 2012.
17. The claimant indicated in her letter of resignation that she was leaving her job to "retire from work and to begin to play" rather than inform the employer of her new employment because she was angry with how she had been treated during the course of her employment and she did not want the employer to know what she was doing after she resigned.
18. For financial reasons, the claimant was unable to retire in August, 2012.
19. After the claimant submitted her letter of resignation and worked out her notice, she was informed by the new employer that the nurse it had intended for her to replace had returned to work unexpectedly and she was no longer needed to fill that position.
20. The new employer attempted to find the claimant another position within the company at one of its other branches, but nothing was available.
21. When the claimant initially called the Department of Unemployment Assistance to file her claim for benefits, she told the claims agent that she had left her job to take a position elsewhere.
22. The claimant does not recall the claims adjuster asking her if she quit for another job.
23. If the claims adjuster had asked the claimant if she had quit for another job, the claimant would have told her that she had.
24. The claimant did not tell the claims adjuster that she quit her job because she was "dissatisfied with them".

Ruling of the Board

The Board adopts the review examiner's consolidated findings of fact, with the exception of Findings of Fact #7 and #10. In so doing, we deem the remainder of the findings to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 25(e) provides, in relevant part, as follows:

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

Since the claimant resigned her position with the employer, she has the burden to show that she is entitled to unemployment benefits. Following the initial hearing, the review examiner concluded that the claimant had carried her burden. We remanded the case for the review examiner to take more evidence as to whether the claimant was actually given a bona fide offer of new employment. After reviewing the record of the remand hearing, as well as the consolidated findings of fact, we conclude that the claimant has not shown that she left her job to accept new permanent, full-time employment.

As an initial matter, we note that one key finding by the review examiner is not supported by substantial and credible evidence in the record. In Finding of Fact #7, the review examiner found that the claimant was verbally offered a full-time, permanent position with her potential new employer. However, the testimony from the remand hearing does not support this. At the remand hearing, the following exchange took place while the claimant was under cross-examination:

EMPLOYER: At the time you were interviewed . . . did she at any time make a verbal offer of employment to you?

CLAIMANT: She she [sic] said to me that, ah, she she [sic] says, she took everything, and she says OK we will I'm going to take everything and will get everything processed and I will be in touch with you before Labor Day. And she says as a matter of fact, why don't you come down and meet everybody. And so to me that was a direct offer.

EMPLOYER: She never made a former verbal offer saying we're gonna [sic] offer this position, do you accept it?

CLAIMANT: Actually, uh, there was no direct offer. But that's not unusual, because she had to verify my CORI, and she had to verify my license to make sure it was in good standing . . . and my references. . . .

EMPLOYER: Are you aware of the fact that in the Commonwealth of Massachusetts, that a CORI cannot be done or you cannot be asked to sign a CORI unless a verbal offer of employment's been made?

CLAIMANT: Well, then obviously she must have because she was doing it.

EMPLOYER: But you don't recall the verbal offer.

CLAIMANT: I don't recall it. But it was being done. So it must have been then.

EMPLOYER: But you don't recall an actual verbal offer.

CLAIMANT: I do not recall it.

The claimant was the only person who testified during the hearing that was present during her interview with the new employer. She testified that she could not recall being verbally offered the new job. Therefore, there is not substantial and credible evidence in the record to support a finding that the claimant was, in fact, verbally offered a new position.

The other findings of fact also support a conclusion that the new employer did not make a *bona fide* offer of new, full-time employment to the claimant. Although the claimant made her availability known to the new employer, she was not given a firm start date. Although the claimant knew roughly what she could expect to be paid in the new position, she was not given a starting salary by the new employer. Furthermore, the claimant's own testimony establishes that the new employer had yet to verify the validity of the claimant's professional license, or check the claimant's references. Finally, we note that meeting staff at the new employer does not, on its own, indicate that a person is being offered a permanent job.

In Finding of Fact #10, the review examiner found that a Massachusetts employer may not execute a CORI check unless a job offer has been made. This finding appears to be based on a representation made by the employer during its cross-examination of the claimant. As such, we are not convinced that this finding is based on substantial and credible evidence, and consequently, we give this finding no weight.

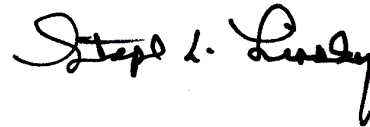
We, therefore, conclude as a matter of law that the claimant quit her job voluntarily, without good cause attributable, because she had not yet been offered and, therefore, could not accept any new full-time, permanent employment.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending October 20, 2012, and for subsequent weeks, until such time as she has had eight weeks of work and in each of those weeks has earned an amount equivalent to or in excess of her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF MAILING - November 13, 2013



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ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

SF/rh