

**Board of Review
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0002 2757 85 (Sept. 20, 2013) – Where a claimant contacted her temporary agency employer prior to filing a claim, but turned down an assignment that was unsuitable due to its commuting distance, the claimant has satisfied the requirement under G.L. c. 151A, § 25(e). The communication provided the temporary employer with actual notice of the employee's availability for reassignment into suitable work.

BOARD OF REVIEW DECISION

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 separated from her position with the employer on August 23, 2012. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 21, 2012. 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 January 11, 2013. 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 and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). 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. Both parties responded. Our decision is based upon our review of the entire record.

The issue on appeal is whether the claimant, a temporary employee of the employer temporary staffing service, complied with the relevant provisions of G.L. c. 151A, § 25(e)(1) by contacting the employer for reassignment prior to opening her claim for unemployment benefits.

Findings of Fact

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

1. The claimant worked in Packing for the employer, a temporary employment agency, from 8/25/11 until she separated from the employer on 8/23/12.
2. The claimant was hired to work full time, 40 hours a week, earning \$8.00 an hour.
3. The claimant completed her last assignment. The client ended the assignment on 8/23/12 because work was slow.
4. The employer had provided the claimant with written information that she was required to contact the temp agency when an assignment had ended for more work prior to filing for unemployment benefits.
5. The claimant knew that she was required to contact the employer for additional work before filing for unemployment benefits.
6. The claimant did not contact the employer for reassignment after being let go on 8/23/12.
7. On 8/28/12, the employer called the claimant to offer a position in [Town A], MA. The claimant told the employer that she could not work because she had no car.
8. On 9/20/12, the employer tried contacting the claimant again to offer her the same job and again the claimant told the employer that she did not want the job.
9. At the time of the claimant's leaving there was work available to her.
10. The claimant did not contact the employer for more work because she was searching for another job elsewhere.
11. Prior to her leaving the claimant had not received any disciplinary action.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them otherwise to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

The review examiner denied benefits after analyzing the claimant's separation under G.L. c. 151A, § 25(e)(1), which provides, in pertinent part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter 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 . . .

Our analysis also considers another portion of G.L. c. 151A, § 25(e), which states, in pertinent part, as follows:

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so....

Under G.L. c. 151A, § 25(e)(1), it is the claimant's burden to establish that her separation was for good cause attributable to the employer. The review examiner initially concluded that the claimant had not met her burden. We remanded the case to take additional evidence to clarify the parties' communications on the claimant's last day. Following remand, we conclude that the claimant has met her burden.

The review examiner found that the claimant's last placement with a client of the employer ended on August 23, 2012, because work was slow. The parties spoke on August 28, 2012, when the claimant – who resides in [Town B] – declined a position in [Town A] because she lacked a car for transportation. The claimant continued her search for employment through alternate sources, prior to filing her claim on September 19, 2012. *See* Hearings Exhibit #1.

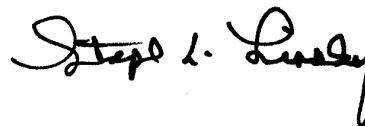
We have previously concluded that communications between the parties, such as the one on August 28 where the claimant's lack of transportation rendered unsuitable the employer's job offer, satisfy the requirements for employees of temporary placement services set forth in G.L. c. 151A, § 25(e). *See, e.g.* BR-122974. In our view, the statutory purpose underlying the requirement that a temporary employee contact his/her temporary employer for a reassignment prior to filing for benefits is to provide the temporary employer with actual notice of an employee's availability for reassignment and the opportunity to offer a suitable reassignment.

The record in this case establishes that, well before the claimant applied for benefits, communication occurred between the parties that afforded the employer with actual notice of the claimant's availability and the opportunity to provide a suitable reassignment. Consequently, the communication between the parties effectuated the relevant statutory purpose.¹ We also note the claimant searched for employment through alternate methods for four weeks after her employment ended before filing for unemployment benefits.

We, therefore, conclude as a matter of law that the claimant fulfilled her obligation as a temporary employee, pursuant to G.L. c. 151A, § 25(e), and that she became separated with good cause attributable to the employer, pursuant to G.L. c. 151A, § 25(e)(1).

¹ The record further establishes that the day after the claimant filed for benefits, the employer contacted the claimant and again offered the reassignment which the claimant had previously refused due to lack of transportation.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending September 22, 2012, and for subsequent weeks if otherwise eligible.



Stephen M. Linsky, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION – September 20, 2013



Judith M. Neumann, Esq.
Member

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.

JPC/rh