

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Stephen M. Linsky, Esq.
Member
Judith M. Neumann, Esq.
Member

Issue ID: 0008 9746 27

BOARD OF REVIEW DECISION

0008 9746 27 (May 29, 2014) – A claimant may quit unsuitable work in order to continue the requirements of a Trade Act-approved training program without jeopardizing her unemployment benefits.

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 resigned from her position with the employer on April 20, 2013. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on September 6, 2013. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 21, 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 or urgent, compelling, and necessitous reasons 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 remanded the case to the review examiner to take further evidence on the claimant's participation in a training program approved under the Trade Act of 1974, as amended, 19 U.S.C. § 2101 et seq. (Trade Act). 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 before the Board is whether the review examiner's conclusion that the claimant did not have good cause or urgent, compelling, or necessitous reasons for leaving her employment to continue with a training program approved under the Trade Act is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full time as a sales analyst for a previous employer, [Employer A], which is a healthcare supply business, located in [Town A], Massachusetts until May 25, 2012, when she was laid off. The claimant worked a set schedule of hours Monday through Friday 7am to 3:30pm and she was paid \$21.00 per hour. The claimant's job duties were to provide product sales information to the sales department and the marketing department and rebate payment to customers. The claimant had a bachelor's degree in business and was required to be proficient in Excel and Microsoft Office to perform her work.
2. The claimant was approved under the Trade Act of 1974 for TAA benefits in September 2012 due to her separation from the employer, [Employer A].
3. The claimant entered into an approved training program under the Trade Act of 1974 in September 2012. The program was a Certified Nursing Assistant, Home Health Aide and Medical Assisting Program, which she attended in Fall River, Massachusetts. The claimant attended the program Monday through Friday 8:30am to 3pm until the end of April 2013.
4. When the claimant completed the Home Health Aide portion of the training program in December 2012, she sought out work in this field. The claimant obtained employment with the instant employer.
5. The claimant was hired to work part time Monday, Wednesday and Friday 4pm to 9pm as a home health aide for the instant employer, a non-medical home care senior agency, from December 26, 2012 until April 20, 2013, when she was separated from employment.
6. The claimant was assigned to work for one (1) client who was insulin dependent. The claimant was required to be certified as a Home Health Aide to perform her job duties. The claimant's job duties consisted of assisting individuals in their daily lives, including dressing, bathing, cooking, cleaning, laundry, and checking vitals.
7. The claimant worked additional hours when needed. The claimant was paid \$12.00 per hour. The claimant's immediate supervisor was the employer's president.
8. At the time of hire, the claimant provided the employer with an availability schedule of Monday through Friday 4pm to 10pm and Saturday and Sunday 3pm to 11pm. The claimant's limited availability was due to the claimant's attendance in the health care training program.
9. Four (4) weeks prior to April 20, 2013, the claimant informed the employer that she would not be available to work for the client she was currently assigned due to a schedule conflict with the claimant's training program. The claimant changed her availability to work for the employer to Monday

through Friday 6pm to 10pm and every other weekend from 3pm to 11pm. The claimant was required to complete the clinical portion of the training program, an externship, as a medical assistant at a clinic located in [Town B], Massachusetts. The claimant was scheduled to work at the clinic Monday through Thursday 9am to 5pm, Friday 8am to 1pm and a potential for Saturday hours. The claimant completed the clinical training portion of the program in seven (7) weeks.

10. The claimant would not be eligible to receive her certification for the training program until the claimant completed the clinical portion of the program.
11. The employer did not have work available for the claimant after April 20, 2013 with the claimant's revised availability hours.
12. The claimant left her work to complete her approved training under the Trade Act of 1974, as amended.
13. At the time of the claimant's separation from employment on April 20, 2013, the claimant was not eligible for EUC benefits in connection with a 2002 claim.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is disqualified from receiving unemployment benefits.

G.L. c. 151A, § 25(e)(1), 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 . . . [or if] his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

19 U.S.C. § 2296(d), provides, in pertinent part:

(d) Eligibility

An adversely affected worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subpart—

(1) because the worker—

(A) is enrolled in training approved under subsection (a);

(B) left work—

(i) that was not suitable employment in order to enroll in such training; or

(ii) that the worker engaged in on a temporary basis during a break in such training or a delay in the commencement of such training; or

(C) left on-the-job training not later than 30 days after commencing such training because the training did not meet the requirements of subsection (c)(1)(B); or

(2) because of the application to any such week in training of the provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work.

20 C.F.R. § 617.18(b)(1) provides, in pertinent part:

(1) *State law inapplicable.* A State law shall not be applied to disqualify an individual from receiving either UI or TRA because the individual:

(i) Is enrolled in or is participating in a training program approved under § 617.22(a);

(ii) Refuses work to which the individual has been referred by the State agency, if such work would require the individual to discontinue training, or if added to hours of training would occupy the individual more than 8 hours a day or 40 hours a week, except that paragraph (b)(1)(ii) of this section shall not apply to an individual who is ineligible under paragraph (b)(2) of this section; or

(iii) Quits work, if the individual was employed in work which was not suitable (as defined in § 617.22(a)(1)), and it was reasonable and necessary for the individual to quit work to begin or continue training approved for the individual under § 617.22(a).

20 C.F.R. § 617.22(a)(1)(i) provides, in pertinent part:

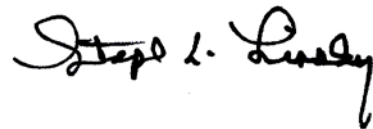
For the purposes of paragraph (a)(1) of this section only, the term “suitable employment” means, with respect to a worker, work of a substantially equal or

higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

The above provisions compel the conclusion that the review examiner erroneously disqualified the claimant from receiving unemployment benefits. The consolidated findings of fact and the record reflect that the claimant had been participating in an approved training program under the Trade Act and had been approved for Trade Adjustment Assistance (TAA) benefits. 19 U.S.C. § 2296(d) and 20 C.F.R. § 617.18(b)(1) provide that state law may not be used to disqualify a worker from receiving unemployment insurance or Trade Act program benefits when the worker leaves unsuitable work, and it is reasonable and necessary for the worker to quit her employment in order to continue with her approved training.

Here, the review examiner found that the claimant earned \$12.00 per hour while working for the employer, which was significantly less than 80% of the average weekly wages that she was earning while employed by [Employer A]. Thus, her employment with the employer was not "suitable," within the meaning of 20 C.F.R. § 617.22(a)(1)(i). Furthermore, the review examiner found that the claimant was required to complete the medical assistant externship in order to receive her certification in the Trade Act-approved training program, and the employer was unable to accommodate her schedule when she was to begin the externship. Since it was reasonable and necessary for the claimant to quit her employment in order to continue with the Trade Act-approved training program, within the meaning of 20 C.F.R. § 617.18(b)(1), the claimant cannot be disqualified from receiving unemployment benefits, under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is therefore reversed. The claimant is entitled to receive benefits for the week ending June 1, 2013, and for subsequent weeks if otherwise eligible.



Stephen M. Linsky, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION – May 29, 2014



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.

AM/rh