

0016 0869 84 (Mar. 24, 2016) – The claimant may not be disqualified for failing to notify the temporary help agency that she was available for work, because when the employer’s account manager notified the claimant that her temporary assignment was over, the employer knew it could offer the claimant a new assignment.

Board of Review
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Issue ID: 0016 0869 84
Claimant ID: 10193709

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 separated from her position with the employer on February 15, 2015. She filed a claim for unemployment benefits with the DUA, effective March 29, 2015, which was allowed in a determination issued on June 6, 2015. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner reversed the agency’s initial determination and denied benefits in a decision rendered on July 17, 2015. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant separated from her job without requesting a new assignment or making other preservation efforts, which is disqualifying, under G.L. c. 151A, §§ 25(e) and 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 conclusion that the claimant quit her employment when she failed to initiate contact with her temporary employer at the conclusion of her last assignment is supported by substantial and credible evidence and is free from error of law, where the employer itself had contacted the claimant to terminate her assignment and, therefore, had knowledge of the claimant’s availability for new assignments.

Findings of Fact

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

1. On March 27, 2014 the claimant began working, as an administrative assistant, for the employer, a temporary employment agency. She was hired by a division that serviced only one client.

2. On March 19, 2015, the claimant signed an [sic] policies and procedures document for the employer which stated that she understood that when an assignment ended she had to call the employer's office immediately and then on a weekly basis to notify the company that she was available for other assignments. [It also] indicated that she understood a failure to do so could result in the termination of her employment with the employer and could jeopardize her eligibility for unemployment benefits.
3. The claimant's first assignment ended in May 2014. The claimant did not contact the employer to indicate she was available for work but the employer still called to offer her available assignments.
4. The claimant began a second assignment for the present employer, for a different client, in October 2014. She was not required to complete new paperwork.
5. While the claimant was working on the assignment that began in October 2014 she received a call from the first client she had worked for explaining that they had a position for which they thought she would be a good fit. She was told that her resume had been sent to the hiring manager by someone in the client's corporate offices. The claimant began an interviewing process. During the course of the interviewing process the hiring manager became aware of a corporate policy that required newly hired administrative assistants to start as contractors with the employer before being hired as employees by the client.
6. The present employer offered the claimant a "temporary to hire" assignment with the client in question that began on the Monday February 15, 2015. The claimant finished the prior assignment on Friday February 12, 2015. The new assignment was to end on or about May 1, 2015.
7. The client concluded during the assignment that the claimant was not a good fit for the position. They asked the employer to terminate the assignment on February 15, 2015.
8. One of the employer's account managers informed the claimant that the assignment was ending on February 15, 2015. No mention was made regarding the requirement to remain in contact with the employer.
9. The claimant assumed that the employer knew that she was available for work since they had been the ones to inform her that her last assignment ended. She also assumed that the employer would continue to contact her with possible assignments as they had done after her first assignment.
10. The claimant did not initiate any contact with the employer to specifically tell them that she was available for new assignments.

11. The employer did contact the claimant, in March 2015, regarding a 2 days assignment that was to start the next day. The claimant was already scheduled for things that day and was unable to accept the assignment.
12. The claimant filed her 2015-01 unemployment claim on April 6, 2015, effective March 29, 2015.
13. On June 6, 2015, DUA issued a Notice of Approval with Issue Identification Number 0016 0869 84-01 stating that the claimant was entitled to benefits under Section 25(e)(2) of the law starting March 29, 2015.

Ruling of the Board

In accordance with our statutory obligation, we review 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 original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that the claimant is not disqualified from receiving benefits.

There is no question in this case that the claimant's last assignment with the employer ended because the employer's client company informed the employer that the client no longer wanted the claimant's services. Since the claimant was employed by a temporary help firm we must consider whether the circumstances of her separation implicate the provision of G.L. c. 151A, § 25(e), concerning employees of temporary help firms. The provision at issue 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. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of the assignment.

Under the above provision, a temporary worker who fails to request a new assignment prior to filing for unemployment compensation is deemed to have quit his employment and will be disqualified from benefits. In several prior decisions, the Board has interpreted this provision to require communication between the employer and the claimant at or near the end of an assignment, so that the employer has an opportunity to tender a timely offer of a new assignment to the claimant and thus avoid the claimant's unemployment. *See, e.g.*, Board of Review Decision 0012 9652 36 (February 27, 2015); Board of Review Decision 0002 2757 65 (September 20, 2013); Board of Review Decision BR-113873 (April 25, 2011).¹

¹ Board of Review Decision 0002 2757 85 is published on the Board's website, www.mass.gov/dua/bor. Board of Review Decisions BR-113873 and 0012 9652 36 are unpublished decisions, available upon request. For privacy reasons, identifying information is redacted.

In this case, the employer temporary help agency was well aware that the claimant's job assignment was ending on February 15, 2015, because it was the employer's own account manager who contacted the claimant to inform her of this fact. *See* Finding of Fact # 8. Although neither party discussed the possibility of a new assignment, the employer clearly had an opportunity to offer the claimant work and did not do so because there was no suitable assignment available at that time.² As in our earlier cases, we decline to interpret the statute to require a claimant to initiate redundant contact with the employer in order to comply with an unduly formulaic interpretation of the statute, when the apparent purpose of the statute has been served.

We, therefore, conclude as a matter of law that the claimant did not quit her employment, but instead, was separated because her assignment ended and the employer had no suitable work available to continue her employment. The claimant is not disqualified from receiving unemployment benefits, pursuant to G.L. c. 151A, § 25(e), under these circumstances.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning March 29, 2015, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 24, 2016



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Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL 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

² Another assignment did not become available until March of 2015. *See* Finding of Fact # 11.

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.

CAS/rh