

0017 5436 74 (Oct. 20, 2016) – The claimant was offered the opportunity to apply for a job. Such an offer does not constitute a definite offer of work, and, therefore, her failure to apply for the job does not constitute a rejection of suitable or unsuitable work under G.L. c. 151A, § 25(c).

Board of Review
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Issue ID: 0017 5436 74

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.

On August 12, 2015, the claimant filed a claim for unemployment benefits with the DUA. On January 27, 2016, the agency issued to the claimant a Notice of Approval indicating that she was entitled to benefits, under G.L. c. 151A, § 25(c), as of the week ending September 26, 2015, because she refused an offer of work that was unsuitable. 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 April 12, 2016. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had rejected an offer of suitable work and, thus, was disqualified, under G.L. c. 151A, § 25(c). 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. Neither party responded. 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 on appeal is whether the review examiner's conclusion that the claimant rejected an offer of suitable work and, thus, suffers a disqualification, under G.L. c. 151A, § 25(c), is supported by substantial and credible evidence and is free from error of law, where the findings of fact make clear that the claimant was not actually offered any work during the week beginning September 20, 2015.

Findings of Fact

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

1. The claimant worked full-time for a social service organization from 07/07/14 through 08/07/15. The claimant's rate of pay was not established.
2. From 07/07/14 through December 2014, the claimant worked as a part-time Family Support Navigator Assistant for one of the employer's programs in which she assisted participating families in obtaining benefits and resources.
3. In December 2014, the claimant accepted an offer of full-time work in another of the employer's programs (PASS).
4. On 08/07/15, the claimant was laid off for lack of work.
5. On 08/12/15, the claimant filed a claim for unemployment benefits with an effective date of 08/09/15.
6. On 09/23/15, the employer contacted the claimant to offer her the opportunity to apply for an available full-time position (Family Support Skill Builder) with the program in which she had worked from 07/07/14 through 12/2014. The director of the program had previously supervised the claimant and believed she was fully qualified for the position.
7. Although the position available was working with individuals rather than families, the job duties were similar and the claimant's prior work history and educational background (Bachelor's Degree in Human Services) met the employer's criteria of a suitable candidate.
8. The Director spoke to the claimant via telephone about the position and asked her if she was interested in interviewing for it. The claimant told the Director she would think about it and get back to her.
9. The job description for the Family Support Skill Builder position does not list anything pertaining to "drug or mental health" as a responsibility or qualification.
10. The claimant did not contact the employer about interviewing for the position.
11. In a DUA Telephone Fact Finding regarding why she did not interview for the position, the claimant answered: "I told them I was not qualified for that job. I told them also that I do not have a vehicle now either even if I was qualified. I know nothing about this stuff either in drug or mental health." [sic]
12. On 01/27/16, the local office issued a Notice of Approval determining that the claimant was entitled to benefits beginning 09/20/15 because the work she refused was unsuitable.

13. The employer appealed that disqualification.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to benefits is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's findings of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, we conclude that the findings support an award of benefits to the claimant.

The question before the review examiner was whether the claimant rejected an offer of suitable work offered to her by the employer. G.L. c. 151A, § 25(c), provides, in relevant part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for] . . . Any week in which an otherwise eligible individual fails, without good cause, to apply for suitable employment whenever notified so to do by the employment office, or to accept suitable employment whenever offered to him, and for the next seven consecutive weeks in addition to the waiting period provided in section twenty-three, and the duration of benefits for unemployment to which the individual would otherwise have been entitled may thereupon be reduced for as many weeks, not to exceed eight, as the commissioner shall determine

The review examiner found that the claimant was laid off by the employer on August 7, 2015. The review examiner further found that, on September 23, 2015, the employer offered the claimant the opportunity to apply for a new job, but the claimant never applied. The review examiner concluded that the claimant's failure to apply for the new job constituted a rejection of suitable work, under G.L. c. 151A, § 25(c). We disagree.

"The claimant bears the burden of proving that the employment [s]he was offered was unsuitable." McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986). However, before addressing the suitability of the work, it must initially be established that the claimant was actually offered work. If the claimant was not offered work during the week addressed by the initial determination, then there would be no work for the claimant to reject, regardless of whether it was suitable or unsuitable. *See* Board of Review Decision 0013 6943 88.¹ We also note that Section 1115(A) of the DUA Service Representative Handbook provides that a discussion of job possibilities does not amount to a definite offer of employment. Here, the claimant engaged in a discussion of a possible job with the employer on September 23, 2015, when the employer offered her the opportunity to apply for a job. Since applying for the job did

¹ Board of Review Decision 0013 6943 88 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

not guarantee that the claimant would be hired, we find that the employer's invitation to apply did not constitute a definite job offer. In the absence of a definite job offer, we cannot conclude that the claimant rejected an offer of work, whether suitable or unsuitable. Furthermore, this is not a case where the claimant failed without good cause to follow-up on a referral for a job opening made by the DUA, in which case the claimant would have been subject to disqualification, under G.L. c. 151A, § 25(c).

We, therefore, conclude as a matter of law that because the claimant was not offered any work during the week ending September 26, 2015, it cannot be concluded that she rejected an offer of suitable work, as meant under G.L. c. 151A, § 25(c).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending September 26, 2015, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 20, 2016



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**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

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.

SVL/rh