

Where the claimant separated after her regular assignment ended and where the claimant declined a number of alternative assignments from the employer because they conflicted with her school schedule, the claimant is held to have quit work voluntarily without good cause attributable to the employer.

**Board of Review
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Issue ID: 0018 4108 88

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by Matthew Shortelle, 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 separated from her position with the employer on or around January 18, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 6, 2016. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on December 7, 2016. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was laid off by the employer due to lack of work and, thus, was not disqualified, under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer'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, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant was laid off due to lack of work is supported by substantial and credible evidence and is free from error of law, where the record indicates that the claimant declined a number of alternative assignments offered by the employer.

Findings of Fact

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

1. The claimant worked as a part time home health aide for the employer, a home care agency, from November 1, 2014 [through] February 14, 2016.
2. The employer's Scheduler (the Scheduler) supervised the claimant.
3. During the claimant's employment, the claimant worked between thirty-four (34) and thirty-six (36) hours per week, Friday afternoon through Monday morning.
4. During the claimant's employment, the claimant and the employer agreed she would only work Friday afternoon through Monday morning.
5. During the claimant's employment, the claimant attended school full time, Monday through Friday, from 8 a.m. to 2:30 p.m.
6. On January 18, 2016, the client the claimant worked with was hospitalized.
7. After January 18, 2016, the claimant contacted the Scheduler for work but the Scheduler told the claimant no work was available for her availability.
8. After January 18, 2016, the Scheduler offered the claimant work Monday through Friday while she was in school. The claimant declined the offers as a result of her schooling.
9. In February 2016, the claimant told the Scheduler if he could not offer her work during her availability, she would file for unemployment benefits. The Scheduler told the claimant she should do what she had to do.
10. Around February 14, 2016, the employer laid the claimant off due to a lack of work.

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. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. Finding of Fact #4 is unsupported by the record in respect to the use of the word "agreed." The claimant merely testified that, when she began working, she told the employer she could only work weekends; the record contains no suggestion that the employer ever agreed to this restriction. Finding of Fact # 10 is also unsupported by the record. The reference to a layoff is contrary to Finding of Fact # 8 and the claimant's testimony that she was repeatedly offered other weekday assignments. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. In rejecting Finding of Fact # 10, we also reject the review examiner's legal conclusion that the claimant was discharged, pursuant to G.L. c. 151A, § 25(e)(2). Rather, as discussed more fully below, we conclude that the remaining findings of fact support the conclusion that the claimant quit her job voluntarily

without good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

As an initial matter, we must determine the applicable section of law to apply to the claimant's separation. The review examiner applied G.L. c. 151A, § 25(e)(2), the section of law dealing with discharges from employment. While it is up to the review examiner to determine the facts based on the record before her, "[a]pplication of law to fact has long been a matter entrusted to the informed judgment of the board of review." Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463-464 (1979). Here, the claimant's uncontested testimony was that her long-term assignment ended, the employer promptly offered alternative assignments with different schedules, and the claimant declined these assignments. While the employer made a unilateral change to the claimant's assignment and schedule, this does not render the claimant's separation a discharge under G.L. c. 151A, § 25(e)(2). Rather, the fact that ongoing work was available and was offered to the claimant indicates that the claimant effectively quit her employment by declining all such offers.

Since the claimant quit her job, her eligibility for benefits is governed by G.L. c. 151A, §§ 25(e) and (e)(1), which provide, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) 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 such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under this section of the law, the claimant bears the burden to prove that her reason for separation was for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

When a claimant is removed from her regular assignment, and then declines an alternative assignment, she may have good cause to quit if the new assignment is unsuitable. *See* Graves v. Dir. of Division of Employment Security, 384 Mass. 766 (1981). Here, there is no suggestion that the new assignments offered to the claimant were unsuitable due to a reduction in wages, a longer commute, or a change in the nature of the work to be performed. Rather, the claimant testified that she declined the work because weekday hours would conflict with her school schedule.

Essentially, after weekend hours were no longer available, the claimant chose to continue her schooling rather than continue her employment. Quitting employment in order to continue or begin schooling simply does not constitute good cause attributable to the employer or urgent, compelling, and necessitous circumstances. The Board has previously found a claimant ineligible for benefits where she reduced her work schedule and eventually quit due to a conflict

with her school schedule. *See* Board of Review Decision 0015 6945 89 (October 30, 2015)¹. This is also consistent with the DUA's Service Representative Handbook, which indicates that a claimant is ineligible for benefits after "a claimant leaves his or her job to enter or return to school," even if the claimant and the employer had agreed beforehand to such an arrangement. *See* Service Representative Handbook § 1207.

We, therefore, conclude as a matter of law that the claimant voluntarily left work without good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending January 23, 2016, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 23, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Judith M. Neumann, 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.

JRK/rh

¹ Board of Review Decision 0015 6945 89 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.