

The agency's redetermination denying the claimant benefits is time-barred under G.L. c. 151A, § 71, because the claimant did not knowingly submit false information to the agency and the redetermination was made more than a year after the original determination awarding benefits to the claimant.

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Issue ID: 0018 5314 44

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Stephen A. Dougal, 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 6, 2015. She filed a claim for unemployment benefits with the DUA on April 7, 2015, and was approved for benefits. On May 7, 2016, the agency redetermined that the claimant was disqualified from the receipt of benefits on the 2015 claim. The claimant appealed the redetermination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's redetermination and denied benefits in a decision rendered on February 7, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without either 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 provide notice to the parties of G.L. c. 151A, § 71, and obtain additional evidence regarding the claimant's responses when she applied for unemployment benefits. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's conclusion, after a redetermination, that the claimant's separation from employment was disqualifying, under G.L. c. 151A, § 25(e), can stand, where the consolidated findings show that the agency's redetermination of the claimant's eligibility for benefits was issued more than a year after the original determination.

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 for the employer, a retail thrift store, as a sales manager, from December 27, 2009 until April 6, 2015. The claimant's annual salary was \$44,000.00.
2. In December 2009, the Store Manager was assigned to the claimant's [City A], Massachusetts store location.
3. In 2011 the claimant's boyfriend died.
4. The claimant subsequently threw herself into her work by working extra hours as a way to cope with the loss of her boyfriend.
5. About April 2014, the claimant was coping better and stopped working as many extra hours over her normal salary hours.
6. When the claimant stopped working extra hours, the Store Manager 1 or 2 times a week would say things to the claimant in front of customers about long lines and doing things improperly.
7. In October 2014, the Store Manager said to the claimant: "Anyone could do this job, it's not that hard. One of us would lose their job but it isn't going to be me."
8. The claimant got upset and felt overwhelmed.
9. When the claimant tried to speak with the Store Manager, he told her he did not have time.
10. The claimant was aware of the employer's complaint procedure (503 Open Door). (Exhibit 15)
11. The claimant did not complain to the District Manager or Regional Manager when they came to the store because the Store Manager was friends with them.
12. The claimant did not bring any complaints about the Store Manager to Human Resources because Human Resources was not located locally, and she did not want the added stress of employer procedures being triggered, such as an investigation.
13. In 2014, the Store Manager discussed with the claimant a transfer to the employer's [City B], Massachusetts location. The claimant declined a transfer because she did not want to leave the [City A], Massachusetts location.

14. From October 4, 2014 through October 25, 2014, the claimant was out of work due to kidney stones and colitis.
15. The claimant received medical care. The claimant weighed 95 pounds. (Exhibit 17, Page 1)
16. The claimant's physician provided the claimant with out-of-work notes. (Exhibit 17, Pages 3,5, 6, 7)
17. On January 2, 2015, the claimant's physician provided the claimant with a note, which she gave to the employer, which stated:
18. "[Claimant] is under my care for a medical condition involving the GI tract. Some of the symptoms may include episodes of diarrhea. As such, she may require frequent bathroom breaks. These are medically necessary because of her underlying medical condition." (Exhibit 17, Page 8)
19. The claimant did not take her discussions with her physician to mean she should leave her employment for medical reasons: "I did not take it to mean to leave my employment".
20. The claimant worked more evening hours over a 10 day period when she returned to work because she had been out.
21. On occasion, the Store Manager paged the claimant while she was in the bathroom.
22. The Store Manager did not intentionally page the claimant when she was in the bathroom.
23. In March 2015, the claimant was absent from work for three days due to migraine headaches. The claimant was released to work starting March 29, 2015. (Exhibit 17, Page 9)
24. The Store Manager informed the claimant she needed to inform him if she was going to be out again.
25. The claimant did not believe the Store Manager would approve more time out.
26. On April 4, 2015, the Saturday before Easter, the Store Manager discussed with the claimant things which had yet not been done for Easter.
27. On April 4, 2015, the claimant told the Store Manager she had to leave.
28. The claimant left the store.
29. The claimant last physically worked for the employer on April 4, 2015.

30. On April 6, 2015, the claimant submitted her resignation citing a hostile work environment. (Exhibit 5, Page 2)
31. The claimant weighed about 89 pounds at the time of separation.
32. The claimant did not request a leave of absence because she did not feel it would be approved. The claimant as a sales manager handled employee requests for leaves of absences [sic].
33. The Store Manager has never refused a leave of absence.
34. The claimant was working with the Store Manager to become a Production Manager. The Store Manager had a monthly task list for completion by the claimant, which was part of the preparation of being promoted to Production Manager.
35. The claimant was not subject to any disciplinary action at the time of separation.
36. Work was available for the claimant at the time of separation.
37. The claimant, who hired and fired employees in her position as a sales manager, understood the term "layoff" to mean "resigning or stepping down from a position".
38. The claimant told the Department of Unemployment Assistance (DUA) she was laid off by the employer in April 2015 because she understood layoff and resigning to be the same thing.
39. The claimant indicated in the fact-finding questionnaire on April 15, 2016, [that] she had been laid off because she thought both layoff and resigning were the same thing.
40. The claimant was issued [her] first unemployment insurance benefit check on April 5, 2015.
41. On May 7, 2016, the DUA issued a Notice of Disqualification to the claimant determining the claimant was not entitled to benefits based upon her separation from the employer in April of 2015.

Credibility Assessment

No testimony or evidence was presented to refute the claimant's testimony she understood the term "layoff" to mean "resigning or stepping down from a position". Therefore, the claimant's testimony she understood the term

“layoff” to mean “resigning or stepping down from a position” is deemed credible.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner’s decision to determine: (1) whether the consolidated 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 consolidated findings of fact, except as follows. We set aside the portion of Consolidated Finding # 40 that states the claimant was issued her first benefit check on April 5, 2015. Per the documentary evidence in the record, the correct date is April 25, 2015. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, given that the agency’s redetermination denying benefits was rendered more than one year after the original determination, we must award benefits to the claimant.

The review examiner based his decision on G.L. c. 151A, § 25(e), which provides 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.

The review examiner concluded that the claimant voluntarily left her employment without either good cause attributable to the employer or urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(1). The examiner’s decision affirmed a redetermination dated May 7, 2016, which denied benefits to the claimant based on her separation from the instant employer. After reviewing the review examiner’s consolidated findings and the totality of the record before us, we agree with his conclusion that the claimant did not establish that she had a valid complaint against the employer or an urgent and compelling reason causing her to leave her employment. Furthermore, even if such circumstances had been in place at the time of her separation, the claimant did not show that she took reasonable steps to preserve her employment prior to leaving, as required under the statute.

However, where the DUA redetermines a claimant’s eligibility, it is required to do so within the statutory time frame. G.L. c. 151A, § 71 provides, in relevant part, as follows:

The commissioner may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) no such redetermination shall be made after one year from the date of the original determination; and provided, further, that with

respect to (3) no such redetermination shall be made after four years from the date of the original determination

In the present case, the consolidated findings establish that the DUA originally determined the claimant to be eligible for benefits based on her separation from the employer in April of 2015. The claimant was issued her first unemployment check on April 25, 2015. As noted above, the agency subsequently redetermined her eligibility for that separation on May 7, 2016. This redetermination was more than one year from the date of the original determination.¹

We take administrative notice that after the claimant separated from the instant employer on April 6, 2015, she indicated to the agency that she had been laid off, and the employer timely responded to a lack of work notification stating that the claimant had quit her employment. For an unknown reason, the agency did not take into account the employer's response and adjudicate the claimant's separation at that time. This was an agency error. It was not until the claimant filed a new claim on April 10, 2016, and the employer once again timely responded that the claimant had quit her job, that the agency adjudicated the claimant's separation and ultimately denied benefits. In our view, it is likely that this oversight would not have occurred if the claimant had informed the agency that she had quit, instead of inaccurately stating that she had been laid off. However, since the review examiner found after remand that the claimant confused the terms "layoff" and "resigned," we cannot say that the claimant knowingly submitted false information to the agency. Thus, the error was not due to misrepresentation of fact and any redeterminations must be made within the one-year limitations period. Because the redetermination was made more than one year from the date of the original determination, it exceeded the limitations period, under G.L. c. 151A, § 71, and is time-barred.

We, therefore, conclude as a matter of law that, even though the claimant did not separate for qualifying reasons, under G.L. c. 151A, § 25(e), the claimant is not required to repay any overpaid benefits under her 2015 claim, because the DUA failed to redetermine her eligibility within the one-year limitations period, under G.L. c. 151A, § 71.

¹ The claimant was denied benefits and an overpayment of \$22,389.00 was assessed. The claimant's overpayment amount, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

The review examiner's decision is reversed. The claimant is not required to return any overpaid benefits for the weeks ending April 18, 2015, through April 2, 2016.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 31, 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.

SVL/rh