

Despite grievances with coworkers, claimant is eligible because she left work in good faith to accept a *bona fide* offer of permanent full-time employment with another employer and was subsequently separated from the new employment for non-disqualifying reasons.

**Board of Review
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Issue ID: 0019 4368 94

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Danielle Etienne, 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 June 29, 2016. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on August 29, 2016. 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 September 28, 2016. 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 provide the claimant with an opportunity to present evidence. 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 on appeal is whether the review examiner's conclusion that the claimant voluntarily left employment without good cause attributable to the employer, or urgent, compelling, and necessitous reasons, under G.L. c. 151A, § 25(e), is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant left her job with the instant employer to accept a full-time permanent position with another employer.

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 as a full time medical assistant for the employer, a hospital, from March 28, 2016 until June 29, 2016 when the claimant quit.
2. On June 26, 2016, the employer's Practice Manager, the claimant's Supervisor, conducted the claimant's 90 day review. During the review, the Supervisor informed the claimant that the claimant's co-workers stated that the claimant was not a team player, not eager to help her co-workers and did not show initiative. The Supervisor notified the claimant that the claimant would [be] kept on probation for an additional 30 days.
3. The claimant sent an email to the Supervisor indicating that she was upset and objected to the negative review.
4. A couple of days after June 26, 2016, the Supervisor notified the claimant that the review would be changed and the claimant would not be kept on probation.
5. The claimant decided to look for other employment because she continued to be upset that her co-workers thought poorly of her and believed she was not doing her job.
6. On June 28, 2016, the claimant contacted her former employer regarding a new position. The claimant's former employer made an offer to the claimant for fulltime permanent employment as a medical assistant with a start date of July 5, 2016.
7. The claimant accepted the offer of fulltime permanent employment with her former employer.
8. On June 29, 2016, the employer's Practice Manager, the claimant's immediate supervisor, received an email from the claimant notifying the employer that she was resigning. The claimant within the resignation letter does not state a reason for resigning and apologizes to the employer for not giving advance notice or warning to the employer regarding her resignation.
9. Thereafter, there was no communication between the claimant and the employer.
10. The claimant admittedly would not have quit on June 29, 2016 if she had not received an offer for a new position from her former employer.
11. The claimant quit to accept new full-time permanent employment with her former employer.

12. The claimant separated from her new position with her former employer on August 5, 2016.

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 conclude that the consolidated findings after remand support an award of benefits to the claimant.

The claimant quit her employment to accept a new position, and, accordingly, her eligibility for benefits is governed by G.L. c. 151A, § 25(e), which provides, in pertinent part, as follows:

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

After remand, the consolidated findings establish that the claimant quit her employment with the instant employer in order to accept an offer of permanent full-time employment with another employer. The record before us also establishes that the claimant began working for the new employer and subsequently became separated for non-disqualifying reasons. We, therefore, conclude as a matter of law that the claimant is not subject to disqualification, since she left her job in good faith to accept a *bona fide* offer of new employment on a permanent full-time basis, within the meaning of G.L. c. 151A, § 25(e).¹

¹ Please note that the employer might be able to obtain relief from charges for the claimant's benefits in this case, pursuant to DUA regulations at 430 CMR 5.05(4): "With respect to any claim filed, if any base period employer shall show to the satisfaction of the Commissioner that the worker became separated from his last employment with such employer solely for the purpose of accepting work with another employing unit by which he had been hired, charges with respect to benefits paid to such a worker shall not be chargeable to such employer's account but shall be charged to the solvency account."

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning June 26, 2016, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 23, 2017



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.

SPE/rh