

Temporary help firm claimant assigned to operate a machine without any prior experience and two minutes of training had a valid workplace complaint. She quit for good cause attributable to the employer due to lack of adequate training. Held claimant made adequate efforts to preserve, where her request for more training was rebuffed and assistance from fellow employees generated conflicting instructions. Claimant may not be disqualified for failing to ask the temporary help firm employer for a new assignment, because there is no evidence that she had been advised in writing to do so.

**Board of Review
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Issue ID: 0019 6109 30

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Margaret Blakely, 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 July 15, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on October 24, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on April 25, 2017. 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 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 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.

The issue before the Board is whether the review examiner's conclusion that the claimant is ineligible for benefits, because notwithstanding her valid workplace complaint, she made insufficient attempts to preserve her employment, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits effective 06/26/2016 with a benefit year end of 06/24/2017.
2. The claimant worked full time for the employer, a temporary staffing agency, between 07/13/2016 and 07/15/2016, when she separated.
3. The claimant's assignment was with a client company. The claimant was responsible for loading juice packets into a machine.
4. The claimant did not know who her direct supervisor or point of contact was for the client company or for the employer.
5. The claimant received approximately two (2) minutes of training on how to perform her job before being left alone to do so. The claimant asked for more training and asked for someone to remain with her. The claimant was told that they "don't do that."
6. The claimant was working the night shift and few people were working.
7. The claimant attempted to ask for help and attempted to find other employees to assist her. Upon finding others, the claimant was told that she was supposed to stay at the machine.
8. On approximately two (2) or three (3) occasions, others arrived to show the claimant what to do. The claimant was provided with different and conflicting directions.
9. The claimant did not ask for help or assistance from a supervisor.
10. On 07/15/2016, the claimant informed the front desk of the client company that she was not coming back because she was not happy.
11. The claimant resigned because she received no training or assistance and did not have a supervisor.
12. The claimant did not ask the client about a transfer.
13. The claimant did not ask the employer for reassignment at another client company because she disliked this assignment and did not think another assignment would be any better.
14. The claimant did not have prior experience as a machine operator. The claimant's prior experience was in shipping.

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 ultimate 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. As discussed more fully below, we conclude from the findings of fact that the claimant had good cause attributable to the employer to resign and that she made an adequate effort to preserve her employment.

The review examiner denied benefits after analyzing the claimant's separation under G.L. c. 151A, § 25(e)(1), which provides, 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

Under G.L. c. 151A, § 25(e)(1), the claimant has the burden to establish good cause. To determine if the claimant has carried her burden, we must first address whether the claimant had a reasonable workplace complaint. *See Fergione v. Dir. of Division of Employment Security*, 396 Mass. 281, 284 (1985) (noting that a reasonableness standard applies to resignation situations). If there is such a workplace complaint, the claimant must also show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. *Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93-94 (1984).

Here, the claimant was placed in a position where she was responsible for loading juice packets into a machine. Finding of Fact # 3. The findings further provide that she came to this job without any prior experience as a machine operator and was given only two minutes of training. Findings of Fact ## 5 and 14. The facts speak for themselves. The claimant was left on her own to perform a job with no prior experience and inadequate training. The review examiner correctly concluded that this lack of training constituted a valid workplace complaint.

Nonetheless, the review examiner disqualified the claimant on the ground that the claimant failed to make adequate efforts to preserve her job before resigning. We disagree with this assessment. The findings show that after the two-minute training, the claimant asked for more training and asked for someone to remain with her, presumably to help her acclimate to operating the machine. This request was denied. *See* Finding of Fact # 5. She then sought out other employees for help, was told to stay at her machine, and ultimately received conflicting instructions. Findings of Fact ## 7 and 8. Though the review examiner noted that the claimant did not ask for help from a supervisor, the claimant did not know who her supervisor was. *See* Findings of Fact ## 4 and 9. Finally, the review examiner found that the claimant did not ask the client company about a transfer. Finding of Fact # 12. To be eligible for benefits, a claimant must show reasonable efforts to preserve her employment — not that she had “no choice to do otherwise.” *Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development*, 66 Mass. App. Ct. 759, 766 (2006) (citation omitted). We are satisfied that the claimant made numerous, reasonable efforts to address her lack of training.

Because the employer is a temporary help firm, this case also requires us to consider another provision under G.L. c. 151A, § 25(c), which provides, in relevant 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 an assignment.

For the purposes of this paragraph, “temporary help firm” shall mean a firm that hires its own employees and assigns them to clients to support or supplement the client’s workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. “Temporary employee” shall mean an employee assigned to work for the clients of a temporary help firm.

Finding of Fact # 13 alludes to this statutory provision. The review examiner found that the claimant did not ask the employer for reassignment to another client company. However, as stated in the paragraph above, failing to contact the temporary help firm is not to be deemed a disqualifying voluntary quit unless the employer gave the claimant written instructions to contact the employer upon completing an assignment. G.L. c. 151A, § 25(e). There is no evidence that the claimant was ever advised in writing of this affirmative obligation to ask for a new assignment. Therefore, she may not be disqualified for failing to do so.

We, therefore, conclude as a matter of law that the claimant left work for good cause, within the meaning of G.L. c. 151A, § 25(e)(1), and that the claimant made adequate efforts to preserve her employment.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning July 10, 2016, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 12, 2018



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.

AB/SPE/rh