

0019 7770 10 (June 28, 2017) – Claimant took a voluntary 1-year leave of absence under her collective bargaining agreement to explore career alternatives. While on leave, she found and lost a teaching job. Upon losing the teaching job, the Board ruled that she was not in unemployment under G.L. c. 151A, §§ 29(a) and 1(r). The claimant had not severed her employment relationship with the employer to accept the new job. She was not involuntarily unemployed.

Board of Review
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Issue ID: 0019 7770 10

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 the claimant benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 14, 2016, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on December 10, 2106, the review examiner modified the agency determination, concluding that the claimant was not in unemployment and, thus, was disqualified, under G.L. c. 151A, §§ 29(a) and 1(r). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

As stated in the findings, the claimant, a union employee, exercised her right under the relevant collective bargaining agreement and obtained a one-year leave of absence to pursue alternative career opportunities. In taking this leave, the claimant preserved her existing seniority, salary, and benefits, which includes the right to return to her position after the expiration of the leave under the same economic terms and conditions of employment. The record before us includes the letter that the claimant wrote to the employer requesting the career alternative leave. In this letter, the claimant stated that, throughout her employment with the employer, she had maintained a residence on Cape Cod. She also stated that, during the summer months, she ran a cleaning service business and had over the years worked on Cape Cod as a Certified Nursing Assistant. The claimant further stated that she was relocating to pursue the expansion of these

services. The claimant advised the employer that she had accepted a teaching position in [Town A] in order to supplement her income during the transition period. A month after the claimant's leave of absence was granted, she separated from her [Town A] teaching position.¹

In resolving the matter before him, the review examiner needed to determine which section of law applied to the claimant's circumstances. The review examiner applied G.L. c. 151A, §§ 29(a), 29(b), and 1(r), the sections of law applicable as to whether the claimant was in total or partial unemployment. He ultimately concluded that, because the claimant was on a leave of absence, she was not in total unemployment, under Sections 29(a) and 1(r) of the Massachusetts Unemployment Statute.

In her appeal to the Board, the claimant asserts she is entitled to benefits under 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.

(Emphasis added)

The Massachusetts Supreme Judicial Court has held that “[a]s it appears in 25(e) ‘leaving’ refers to the termination or severance of the employment relationship . . . not to a temporary absence.” Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 336 (1979) (citation omitted). In the instant matter, the claimant did not terminate or sever her employment relationship with the employer. Rather, the claimant exercised her right under a collective bargaining agreement and obtained a one-year leave of absence to explore career alternatives. In so doing, the claimant continued her employment relationship with the employer and maintained her employment rights and benefits. Dohoney at 338 (“Employment contracts, including collective bargaining agreements, usually provide for leaves whereby the employment relationship continues and the employee maintains her job-related rights and status”). Thus, the claimant did not “leave” her employment, within the meaning of G.L. c. 151A, § 25(e), to accept new employment. Consequently, the above-cited provision of G.L. c. 151A, § 25(e), is not applicable to the claimant.

The record before us establishes that, in voluntarily requesting a leave of absence to pursue career alternatives, the claimant set in motion a chain of events, which led to her being temporarily unemployed for part of the 2016–2017 academic year. See LeBeau v. Comm’r of Department of Employment and Training, 422 Mass 533, 537 (1996). Since the claimant brought her temporary absence from employment on herself, we do not believe that the claimant was involuntarily unemployed during the period of her leave. Id. at 538. We also do not believe

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

that the change in the claimant's circumstances when she lost her teaching job in [Town A] changed her status from a voluntary leave of absence to involuntary unemployment.²

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending June 26, 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 - June 28, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Judith M. Neumann, Esq. declines to sign the majority opinion.

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.

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² We also note that to allow the claimant to recover benefits would be contrary to the public policy enunciated by the Supreme Judicial Court in LeBeau. In its decision, the Court opined that that to allow the claimant to recover benefits would force the employer to both pay for a replacement as well as the claimant's unemployment benefits. The Court stated such a result would be unfair and defeat the intent of the collective bargaining agreement. LeBeau at 537-38.