

Where the claimant obtained a part-time job in the benefit year of her claim, and the pay was roughly half of what she made at her prior job, the job duties were not related to the kind of work that she had done for almost twenty years prior, and the out-of-pocket healthcare costs were \$6,500, her decision to quit the job after about one month of work does not result in a disqualification under G.L. c. 151A, § 25(e)(1), because she quit the job for good cause due to the unsuitability of the work.

**Board of Review
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Issue ID: 0019 8978 73

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Peter Sliker, 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 October 10, 2016. She then re-opened her unemployment claim.¹ On December 30, 2016, the DUA sent the claimant a Notice of Disqualification, informing her that she was not eligible to receive benefits beginning October 9, 2016, as a result of her separation from this employer. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination 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 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 remanded the case to the review examiner to take additional evidence as to whether the job with this employer was suitable. 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 before the Board is whether the review examiner's conclusion that the claimant is subject to disqualification, under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant took this part-time job in the benefit year of her claim, learned during orientation that her out-of-pocket healthcare expenses

¹ The claimant had initially filed a claim earlier in the year, and the effective date of the claim is July 31, 2016.

would be \$6,500.00 per year, was unfamiliar with the math requirements necessary for her to work in the new position, and was in a position outside of her usual or normal occupation as a home care nurse or manager.

Findings of Fact

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

1. The claimant's base period employment was as a clinical manager for a home health care provider ([Employer A], Inc., EAN [XXXXXXXX]). She worked there from May 1, 2015, until July 29, 2016. She worked full-time and earned an annual salary of \$80,000. The claimant had health insurance through Blue Cross which was provided as part of the base period employer's benefits plan.
2. The claimant has epilepsy and had seizure[s]. This resulted in the temporary loss of her driver's license. She became separated from her base period employer because she was not able to drive. She applied for and was approved for unemployment benefits. She was determined to have a benefit year beginning July 31, 2016.
3. The claimant had no health insurance after she separated from her base period employer.
4. The claimant applied for and accepted work with a new employer ([Employer B], NH Employment). She began work on August 23, 2016. They did not have permanent assignments available. The claimant left during her orientation for work at the above named employer on September 11, 2016.
5. The claimant was hired as a rehab liaison for the above named employer, a hospital. She began work for the employer on September 12, 2016.
6. When she was hired, the claimant agreed to a part-time schedule of 24 hours each week at the hourly rate of \$34.50.
7. Before working for the employer, the human resources business partner (HR business partner) e-mailed the claimant health insurance information. There were several plans described including plans for part-time employees which included large out-of-pocket expenses. The plans for employees who work 30 or more hours, which is considered full-time by the employer, do not have as much in out-of-pocket expenses.
8. The claimant read the e-mail but was confused and had questions about the different levels of coverage.
9. Because she was unclear about the e-mail, the claimant made an appointment with the HR business partner. She went to the employer to meet with the HR

- business partner but she was not there. A representative who was there told the claimant that whatever was quoted to her was correct. She told the claimant her questions would be answered during orientation.
10. At the time she began her employment, the claimant was still not clear about what her health insurance benefits would be.
 11. The first week of the claimant's employment was orientation. During orientation, the HR representative presented an explanation of the healthcare benefits. The claimant learned that, because she was part-time, her healthcare plan would not pay for the first \$6,500 in out-of-pocket medical expenses.
 12. She did not complain about this because she wanted the job. She resolved to see if she could increase her hours by picking up nursing shifts, so that she would be considered full-time.
 13. Also during her first week, the claimant was required to take a math test. Many of the questions included computations of conversions, drip factors and drip rates. The claimant thought these computations would only be necessary if she was assigned to work in an intensive care setting, which the claimant did not plan to do. She scored 77.5%. She was told a score 90% was satisfactory. She was told that she could not work if she did not pass.
 14. The claimant was told she could take the test again but did not want to because she was anxious and nervous. The claimant did not think she could score 90%. She was anxious because she is a 49 year old woman and has not studied math since she was in her 20's. She completed nursing school in 1991.
 15. The claimant was dissatisfied with her supervisor's management of her. As they were ending their workday, the supervisor frequently said to the claimant: "Come back tomorrow. We'll go over everything you did wrong." The claimant felt her supervisor's comments were negative.
 16. The claimant did not complain to her supervisor or the employer's human resources department because it was only she and her supervisor in their office and she feared it would impact their working relationship. The claimant also did not want to "burn bridges" in the small medical community around [Town A], NH.
 17. Prior to 2015, the claimant worked as a homecare nurse and a nurse manager. She had approximately 18 years of experience as a homecare nurse and approximately 6 to 7 years as a nurse manager. She also worked as a preceptor, teaching new staff. Her work as a homecare nurse included the direct care of patients and less administrative work. Her work for the employer was different in that she was now evaluating patients for referral purposes, doing more administrative work and presenting patients for admission to physicians at rehabilitation providers.

18. In early October, 2016, the claimant decided she would leave the employer and look for work as a homecare nurse. She did so because her health insurance benefits included the \$6,500 in out-of-pocket expenses, because of the math test and because she felt mistreated by her supervisor.
19. On Monday, October 10, 2016, the claimant left a voice mail message for her supervisor telling her that her employment was not working out. She told her supervisor she was leaving the employer for personal reasons.
20. The claimant worked 23.75 hours and earned \$819.38 for the week ending September 17, 2016. She worked 48.5 hours and earned \$1,673.25 for the two (2) week period ending October 1, 2016. She worked 24.5 hours and earned \$845.25 for the week ending October 8, 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. As discussed more fully below, we conclude, contrary to the review examiner, that the claimant is not subject to disqualification. In our view, after working at her job for about one month, the claimant reasonably concluded that the job was not suitable for her and, therefore, quit for good cause attributable to the employer.

There is no dispute that the claimant resigned her position with the employer on October 10, 2016. Consolidated Finding of Fact # 19. G.L. c. 151A, § 25(e)(1), 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 this section of law, the claimant has the burden to show that she is eligible to receive unemployment benefits. In his decision, the review examiner focused on three things which factored into the claimant's decision to resign: the out-of-pocket cost of health insurance, the inability to pass the math test, and the disagreement with the supervisor's management style. *See* Consolidated Finding of Fact # 18. Although the claimant may not have stated so explicitly, the gist of her argument is that the job did not turn out to be suitable for her, given her prior work history, misunderstanding of the health insurance benefit, and the job requirements (such as passing the math test).

As noted above, the claimant obtained her job with this employer after she had established a claim for unemployment benefits in late July of 2016. “[O]ne who takes a position while on unemployment that turns out to be not ‘suitable’ and therefore leaves the job is not subsequently barred from receiving benefits.” Baker v. Dir. of Division of Unemployment Assistance, No. 12-P-1141, 2013 WL 3329009, *1 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*. “Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of ‘good cause.’” Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 n.3 (1981); Baker, 2013 WL 3329009 at *1. The fact that the claimant may have initially thought that she would try the position does not mean that the job was suitable. It may have been objectively unsuitable from the start. *See Baker*, 2013 WL 3329009 at *2; Jacobsen v. Dir. of Division of Employment Security, 383 Mass 879, 880 (1981).²

The suitability of a job is dependent on many factors. Under G.L. c. 151A, § 25(c), the specific provision of unemployment law which deals with offers of suitable work, the agency may consider whether the position is one for which the worker is reasonably fitted by training and experience. The pay rate associated with the offered work can also be taken into account. *See Graves*, 384 Mass. at 767. The amount of benefits associated with the offered job is also relevant. *See North Shore AIDS v. Rushton*, No. 04-P-503, 2005 WL 3303901 (Mass. App. Ct. Dec. 6, 2005), *summary decision pursuant to rule 1:28*. As with all provisions of Chapter 151A, we must construe what is suitable liberally in aid of the purpose of the unemployment statute, which purpose is to “lighten the burden” of the unemployed claimant. *See G.L. c. 151A, § 74*.

Prior to starting work with this employer, the claimant had been employed full-time at a job from which she earned about \$80,000.00 per year. Consolidated Finding of Fact # 1. The job with this employer, however, was part-time, 24 hours per week. She was paid an hourly rate of \$34.50. This pay rate and schedule of work would result in about half of what the claimant was making in her base period with her prior employer.³ Clearly, accepting the job with this employer meant a large cut in income for the claimant.

As to the job duties, the job prior to the filing of her claim had been in the home health care field, an area of nursing in which the claimant had almost 20 years of experience. *See Consolidated Findings of Fact ## 1 and 17*. The job with this employer focused on referrals, administrative work, and presenting patients to providers. This was different from her prior work, which involved the direct care of patients and the training and teaching of other staff. *See Consolidated Finding of Fact # 17*. Unlike the new job, the claimant’s prior work also did not involve familiarity with intricate math calculations or computations. She had not done this type of math work for over 20 years. *See Consolidated Findings of Fact ## 13 and 14*. While she may have been able to study more so that she could pass on test day, the claimant was clearly uncomfortable with the focus on calculations in the new job.

² “[A]lthough an employee who leaves a job due to its unsuitability has ‘good cause attributable to the employer,’ this phrase carries with it no implication that the employer has done anything wrongful. It may simply be that the job it seeks to fill is not suitable for the particular individual.” Baker, 2013 WL 3329009, n.2.

³ If the claimant worked twenty-four hour per week at \$34.50 per hour, that gives a gross weekly amount of \$828.00. Multiplied by 4.3 weeks in a month gives a monthly gross amount of \$3,560.40. This monthly total multiplied by twelve months gives a yearly salary of \$42,724.80.

The next aspect of the claimant's dissatisfaction with the job was the cost of health insurance. It should be noted that the findings indicate that the claimant was never entirely sure of what her health insurance benefit would be prior to starting the job. Although she had been sent the information in an email, she was confused about it and tried unsuccessfully to get more information from the employer prior to her orientation. *See Consolidated Findings of Fact ##8–10.* Once at the orientation, she learned about the \$6,500.00 out-of-pocket expense she would have to pay before the insurance would pay for any treatment. While the review examiner did not make findings as to how much the claimant's deductible was under her former employer's plan, *see Consolidated Finding of Fact # 1*, and the findings do not indicate how much she needed to spend out-of-pocket for health care expenses, the \$6,500.00 amount is certainly a large chunk of the approximately \$42,000.00 total yearly salary the claimant had with this employer.⁴

Combined together, we conclude that the job with this employer was not suitable for the claimant. The drastic decrease in income, the change of job duties, and the unanticipated high out-of-pocket costs in the new employer's health insurance plan combined to make the job unsuitable and establish good cause for the claimant to quit.

We, therefore, conclude as a matter of law that the review examiner's initial decision to deny benefits, pursuant to G.L. c. 151A, § 25(e)(1), is not based on substantial and credible evidence or free from error of law, because the claimant has carried her burden to show that, after she worked for the employer for several weeks and developed an understanding of the work, her job duties, and the benefits associated with it, the job was not suitable for her.⁵

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 9, 2016, and for subsequent weeks if otherwise eligible.

⁴ Toward the end of the first hearing, however, the claimant suggested that she would not spend \$6,500.00.

⁵ Given that the claimant worked for about one month for the employer, we are satisfied that she gave the job a reasonable trial period prior to quitting. *See Jacobsen v. Dir. of Division of Employment Security*, 383 Mass 879 (1981). Moreover, for the reasons noted in our discussion, the claimant did not need to do anything further to try to keep her job, as the job duties, benefits, and hours were established by the employer and associated with the job itself. *See Baker*, No. 12-P-1141, 2013 WL 3329009, n.2.

N.B.: The claimant is strongly encouraged to contact the DUA regarding another outstanding issue on her claim, which will very likely affect her eligibility for benefits. On December 30, 2016, the DUA issued a Notice of Disqualification in Issue ID 0019 8986 58, based on the claimant's separation from her employment with [Employer B]. The disqualification is in effect beginning September 11, 2016. The review examiner told the claimant about this issue during the remand hearing conducted on April 14, 2017. Again, this issue will affect whether the claimant receives benefits, and she should inquire about the issue promptly.

BOSTON, MASSACHUSETTS
DATE OF DECISION – May 23, 2017



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, 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.

SF/rh