

**Board of Review
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Issue ID: 0020 4153 07

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by Richard Conway, a review examiner of the Department of Unemployment Assistance (DUA), to award the claimant benefits following her separation from employment in July 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On January 18, 2017, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and only the claimant participated in the telephonic hearing. In a decision rendered on March 29, 2017, the review examiner reversed the agency determination, concluding that the claimant left her employment in good faith to accept new employment on a permanent full-time basis, that she became separated from such new employment for good cause attributable to the new employing unit, and, thus, that she was not disqualified, under G.L. c. 151A, § 25(e). The Board accepts the employer's application for review.

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. We also believe these findings sustain the review examiner's legal conclusion.

G.L. c. 151A, § 25(e) states in relevant part: "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."

The review examiner credited the claimant's testimony that she received a firm offer of permanent full-time work from a hospital located in Texas, and that she left her job at the instant employer in order to accept such employment. On appeal, the employer states that the claimant has not worked since July 3, 2016, and that they have subsequently been unable to contact her to offer her additional assignments. This is consistent with the claimant's testimony that she did not

specifically notify the employer that she was resigning. However, there is no requirement to do so under the law.

Of interest to the employer may be regulations found at 430 CMR 5.05(4), which state in relevant part: “[I]f 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.” This situation appears to apply to the instant employer.

Also note that, under longstanding DUA policy, only employers from which the claimant separated in her last eight weeks of work before filing for benefits are to be considered “interested parties” to the claimant’s unemployment claim. *See* DUA Service Representatives Handbook § 1710. Thus, the agency generally does not explore the reasons that a claimant separated from employment prior to these eight weeks. The review examiner’s findings indicate that, after leaving the instant employer, the claimant worked full-time for another employer for approximately three months, and that, after being separated from such subsequent employment, she filed an unemployment benefits claim effective December 11, 2016¹. In light of this chronology, even if the claimant’s separation from the instant employer was for disqualifying reasons, no disqualification would be imposed due to the eight-week interested party rule.

¹ These facts are also consistent with DUA records from the UI Online system.

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week ending July 17, 2016, and for subsequent weeks, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 1, 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.

JRK/rh