

**Board of Review
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Issue ID: 0020 4771 70

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by D. Lusakhpuryan, a review examiner of the Department of Unemployment Assistance (DUA), to award the claimant benefits following her separation from employment on December 20, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On February 28, 2017, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on April 8, 2017, the review examiner affirmed the agency determination, concluding that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest and, thus, was not disqualified, under G.L. c. 151A, § 25(e)(2). The Board accepted the employer'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 employer's appeal, we conclude that the review examiner's decision to award benefits to the claimant is based on substantial evidence. However, we note that the review examiner applied an incorrect provision of law with respect to the cause of the claimant's separation. This error does not affect the claimant's substantial rights, as she remains eligible for benefits.

The review examiner concluded that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest under G.L. c. 151A, § 25(e)(2), as she established mitigating circumstances for her failure to meet the client's expectation that she report to work as scheduled. This conclusion is based on the review examiner's apparent belief that the claimant's eligibility for benefits is determined by the circumstances surrounding her separation from the employer's client. This belief is incorrect, as the claimant's eligibility for benefits is based upon her separation from the employer, not the client. The review examiner found that, after her separation from the client, the claimant was still eligible for reassignment through the employer. The review examiner further found that the claimant asked the employer for reassignment, but no suitable assignment was available at that time. As a result, the claimant filed a claim for unemployment benefits. In light of these findings, the claimant's separation from the instant employer must be analyzed under G.L. c. 151A, § 25(e), which provides, in pertinent 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.

Since the claimant asked for reassignment and no suitable assignment was available to her, we conclude as a matter of law that she did not voluntarily quit her employment prior to filing for benefits. Accordingly, her separation from employment is not disqualifying, under G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 16, 2017



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.

SVL/rh