

Pursuant to Board precedent, claimant who quit his job to take a full-time assignment with a temporary employment agency is not disqualified under G.L. c. 151A, § 25(e)(1), because the work with the temporary agency is “permanent,” as contemplated in G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0020 5537 93

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Kathleen Della Penna, 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 separated from his position with the employer on November 1, 2016. After separating from a subsequent employer, he filed a claim for unemployment benefits with the DUA. The claim was determined to be effective December 18, 2016. On January 24, 2017, the DUA sent the claimant a Notice of Disqualification, which informed him that he was not eligible to receive unemployment benefits due to his 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 May 31, 2017.

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 accepted the claimant’s application for review and 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 subject to disqualification, pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant quit his position with this employer to take a full-time job with a temporary employment agency.

Findings of Fact

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

1. The claimant worked as a selector and he was employed for the instant employer, a contract food service company, from 12/14/15 until his separation on 11/1/16.
2. The claimant found a new job that worked better with his school schedule, but, in order to be able to accept the new job, he had to start working immediately.
3. On 11/1/16, the claimant informed the human resource person that he wanted to put in a notice, but he had to start the other job immediately.
4. The human resource person told the claimant to just give her his identification badge and she would take care of it.
5. On 11/1/16, the claimant began the new job with the temporary agency.
6. On 12/28/16, the claimant filed an initial claim after becoming separated [from] the new employer.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is subject to disqualification. Because the conclusion that the claimant did not quit his job for full-time, permanent work is legally erroneous, we reverse.

The review examiner found and concluded that the claimant quit his position with this employer to take a full-time¹ assignment with a temporary employment agency. G.L. c. 151A, § 25(e), 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.

As noted, the claimant quit his job to take a full-time job. As to whether the new work was permanent, the review examiner concluded the following:

¹ The full-time nature of the temporary work was not noted in the review examiner's findings. However, she did mention it in her conclusion, and the claimant testified that the work was full-time during the hearing.

Since the job that the claimant accepted was not a permanent job he has not met his burden of proof to establish that he is eligible in accordance with the provisions of Section 25(e)(1) of the law.

The conclusion infers that, because the claimant accepted a position with a temporary employment agency, the job was not permanent.

This is an error of law. In Board of Review Decision 0010 6162 10 (September 29, 2014), we noted that, while the term “permanent employment” is not defined in G.L. c 151A, “the phrase is most reasonably interpreted to mean ‘indefinite,’ *i.e.*, ‘lacking precise limits; uncertain, undecided.’ American Heritage College Dictionary, 4th Ed., 2004.” Id. at p. 3. The claimant’s new employment was with a staffing agency, not with the agency’s clients. Thus, the claimant’s employment relationship with the staffing agency was neither governed by nor limited to the duration of the claimant’s initial assignment. The relationship was open-ended and indefinite. In this sense, the new job was as “permanent” as a typical job with any employer, even though the work may have consisted of a series of short-term assignments to clients. As we summarized in Board of Review Decision 0010 6162 10 at p. 5:

Absent evidence that the arrangement is intended by both parties to be of finite, short-term duration, employees who accept employment by a staffing agency can reasonably expect their jobs to be just as “permanent” as any other job. That is to say, they can expect the employer to continue to offer them work, even if it is in the form of a succession of assignments. . . . We can think of no reason to exclude [a claimant] from unemployment benefits simply because his employer was in the business of supplying contingent services to client companies.

For the foregoing reasons, and in line with our holding in Board of Review Decision 0010 6162 10, we conclude that the claimant left his employment “in good faith to accept new employment on a permanent full-time basis,” within the meaning of G.L. c. 151A, § 25(e).²

² There is no indication in the agency’s records that the claimant’s separation from the temporary employer was something other than non-disqualifying.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 30, 2016, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 21, 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.

SF/rh