

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

**Board of Review
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Issue ID: 0020 8204 58

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Stephen Dougal, 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 his position with the employer on December 9, 2016. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 9, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on April 15, 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 or for urgent, compelling, and necessitous reasons 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant 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 did not leave his employment in good faith to accept new employment on a permanent full-time basis, pursuant to G.L. c. 151A, § 25(e), is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time for the instant employer, a medical devices distributor, as a material handler, beginning May 13, 2016. The claimant was paid \$12.50 per hour.
2. The claimant's job experience is primarily in production.
3. On December 12, 2016, the claimant was offered a full-time 6 month "temp to hire" position as a production technician at a pay rate of \$16.50 per hour through a temporary employment agency (TEA) with TEA's client (Client A), a medical device manufacturer.
4. The claimant accepted the job because it was in his field of experience and the \$4.00 per hour increase in pay.
5. The claimant's start date was set at December 12, 2016.
6. The claimant was not guaranteed he would be hired at the expiration of the six month period.
7. The claimant was assigned to Client A to fill in for an injured production technician.
8. On December 9, 2016, the claimant notified the instant employer his last day would be December 16, 2016. The claimant used vacation time for the week of December 11, 2016 through December 17, 2016.
9. On December 12, 2016, the claimant started work for TEA with at Client A.
10. On January 2, 2017, the claimant was told his assignment with Client A had ended.
11. The claimant has since worked other temporary work assignments.

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. After such review, the Board adopts the review examiner's findings of fact and credibility assessment except as follows. Finding of Fact # 1 erroneously states that the claimant began working for the instant employer on May 13, 2016, a date not found in the record. In reality, both the claimant's testimony and both parties' adjudication questionnaires placed the date as October 3, 2016. Finding of Fact # 3 erroneously states that the claimant received his new job offer on December 12, 2016. The claimant testified that he began working for this second employer on that date, but that he received the job offer earlier, on December 4, 2016. Likewise, Finding of Fact # 10 erroneously lists the date that the claimant was notified that his latter employment was ending. The claimant testified that this occurred on January 4, 2017; on appeal, the claimant also provided e-mail documentation showing that he was notified on January 4, 2017. In adopting the remaining findings, we deem 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. Rather, the findings of fact show 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), and, therefore, we reverse.

The claimant quit his position with this employer to accept new employment with a temporary staffing agency. The claimant's separation is therefore governed by 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.

It is undisputed that the claimant quit his employment to accept a new *full-time* job. However, the review examiner concluded that the claimant was not eligible pursuant to this portion of the statute because he left for a temporary position "with no guarantee of permanent employment." We disagree with this conclusion. Whereas the claimant's new employer was a temporary staffing agency, it does not necessarily follow that the position itself was not permanent. 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 between the claimant and the staffing agency 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 various 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 previous holdings, we therefore conclude as a matter of law 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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending January 7, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 26, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**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