

**Upon being laid off by the client company, a temporary help firm employee contacted the employer for a new assignment, but none was offered. The fact that the claimant then made himself unavailable for work over the next few weeks to care for his mother did not change the nature of his separation and does not affect his eligibility for benefits, because he waited until he was again available for work to file an unemployment claim.**

**Board of Review  
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**Issue ID: 0020 9382 64**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The employer appeals a decision by Margaret Blakely, a review examiner of the Department of Unemployment Assistance (DUA), to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant separated from his position with the employer on January 6, 2017. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 21, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on July 29, 2017. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for urgent, compelling, and necessitous reasons, and, thus, he was not 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 employer's appeal, we remanded the case to the review examiner to make further subsidiary findings from the record pertaining to communications between the claimant and the employer. Thereafter, the review examiner issued her 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 eligible for benefits due to urgent, compelling, and necessitous circumstances, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that he stopped working when the employer's client company laid him off.

### **Findings of Fact**

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

1. The claimant worked for the employer, a staffing agency, between 08/09/2016 and 01/06/2017, when he separated.
2. The claimant was assigned to work full time at a client company as a process engineer. The assignment began on 08/09/2016 and ended on 01/06/2017 due to a lack of work.
3. The employer maintained a “Notice of Unemployment Insurance Eligibility Requirement” requiring that, when an assignment is completed, employees must contact the employer within three (3) working days to request reassignment.
4. The claimant signed the notice on 08/03/2016.
5. On 01/05/2017, the claimant called the employer’s recruiter (“recruiter”) to inform him that the claimant was being laid off from the assignment on 01/06/2017.
6. During the call, the recruiter said, “Send us your resume so we can get you another interview for another job.” The recruiter did not offer the claimant another position.
7. During the call, the claimant replied, “At this time I have a family member that’s sick. I’m gonna [sic] take some time off to take care of this family member.”
8. The employer’s recruiting manager did not have any direct contact with the claimant regarding the claimant’s 01/05/2017 conversation with the recruiter.
9. The claimant did not provide his resume to the employer at that time because he wanted to take some time off to care for his mother.
10. The claimant did not request a leave of absence. The recruiter did not raise a leave of absence to the claimant.
11. No one else was available to provide care for the claimant’s mother. The claimant’s mother is eighty nine (89) years old, lives with the claimant, and was undergoing cancer treatments.
12. The claimant waited until he was available to work to file his new unemployment claim. The claimant filed his unemployment claim on 01/30/2017, effective 01/29/2017.
13. Once the claimant was available to work, he emailed his resume to the recruiter on or about 02/03/2017.

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 original 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 agree with the review examiner's legal conclusion that the claimant is eligible for benefits, but we do so on other grounds.

The review examiner rendered her decision based upon G.L. c. 151A, § 25(e)(1), which states, 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

We believe she applied the wrong provision of law. Consolidated Finding # 2 states that the claimant stopped working for the employer on January 6, 2017, because the employer's client company ended his assignment due to lack of work. Generally, when a claimant stops working because there is no more work for him to do, this is treated as an involuntary termination of employment and he is eligible under G.L. c. 151A, § 25(e)(2).

Because the claimant worked for a temporary help firm, the Legislature has imposed an additional requirement that he contact the employer for a new assignment before filing his unemployment claim. Specifically, a separate provision under G.L. c. 151A, § 25(e), states 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.

For the purposes of this paragraph, "temporary help firm" shall mean a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. "Temporary employee" shall mean an employee assigned to work for the clients of a temporary help firm.

The DUA has also promulgated regulations pertaining to this requirement. They are found at 430 CMR 4.04(8), and state, in relevant part, as follows:

(8) Temporary help Firm Former Employees.

(b) Unless the claimant satisfies the provisions of 430 CMR 4.04(8)(c), the commissioner shall determine that the claimant has voluntarily quit employment if:

1. the claimant was employed by a temporary help firm; and
2. the temporary help firm advised the claimant in writing as provided in 430 CMR 9.04(8)(e) of the need to contact the temporary help firm for reassignment upon completion of an assignment; and
3. the temporary help firm submits information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.

(c) The claimant may avoid the commissioner's determination in 430 CMR 4.04(8)(b) above if the claimant shows that he/she:

1. did request another assignment; or
2. did not receive written notice from the temporary help firm of the obligation to request another assignment; or
3. had good cause, as determined by the commissioner, for failing to request another assignment.

(d) The request for a new assignment must be made by the claimant upon completion of the current assignment and before filing an initial (new or additional) claim for benefits.

(e) Any notice given by the temporary help firm to its temporary employees of the need to request a new assignment upon completion of their current assignment must be in writing and inform the employees of the method and manner for requesting a new assignment, such method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary employment firm for which he/she works, and that a failure to request a new assignment may affect their eligibility for unemployment compensation.

As we have previously stated, we believe the statutory purpose underlying the requirement for a temporary help firm employee to contact the employer for reassignment is to provide the employer with actual notice of the employee's availability and the opportunity to offer a suitable reassignment before the claimant becomes unemployed. *See* Board of Review Decision 0013 8756 65 (Mar. 26, 2015) (temporary help firm employee satisfied the notice requirement when he asked the employer's recruiter for a new assignment two days before his layoff from his current assignment and before filing his unemployment claim). In the case before us, Consolidated Finding # 5 shows that the claimant called the employer's recruiter the day before

he was laid off to inform him that his assignment was ending. He satisfied the requirement to contact the employer upon completion of his assignment.

The review examiner found that during the claimant's call with the recruiter, the recruiter did not offer the claimant another position, but instructed the claimant to send the employer his resume so that the employer could get the claimant an *interview* for another job. Consolidated Finding # 6. At this point, because the employer did not have additional work, the claimant's separation was qualifying under G.L. c. 151A, § 25(e).

The fact that the claimant then removed himself from the job market for the next few weeks so that he could take care of his mother is not relevant to the question before us. We note that if he had immediately filed an unemployment claim and sought benefits while making himself unavailable for work, he may have been disqualified under other sections of the unemployment statute.<sup>1</sup> However, he did not immediately file a claim. He waited until he was available to work again, filing his claim on January 30, 2017.<sup>2</sup> See Consolidated Findings # 12.

We, therefore, conclude as a matter of law that, because the claimant separated from the employer due to lack of work, he was not disqualified under G.L. c. 151A, § 25(e)(2). We further conclude that his separation is not deemed to be a voluntary quit because, as a temporary help firm employee, he satisfied the statutory requirement to contact his employer for an additional assignment before filing a claim for benefits, pursuant to G.L. c. 151A, § 25(e), and 430 CMR 4.04(8).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning January 29, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 12, 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.

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<sup>1</sup> See G.L. c. 151A, §§ 24(b), 29(a), and 1(r).

<sup>2</sup> Because the claimant did not request unemployment benefits during the period that he had withdrawn from the labor force, there is no basis for asking the DUA to consider his eligibility under these other provisions for these few weeks.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://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.

AB/rh