

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Judith M. Neumann, Esq.
Member
Charlene A. Stawicki, Esq.
Member

Issue ID: 0021 0714 05

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 the claimant benefits beginning February 12, 2017, and indefinitely thereafter. We review, pursuant to our authority under G.L. c. 151A, § 41. We affirm the disqualification, but we also note that an end date for this issue should have been entered by the review examiner.

On May 16, 2017, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and only the employer attended the hearing. In a decision rendered on August 9, 2017, the review examiner reversed the agency determination, concluding that the claimant had not been accepting work offered to her and, thus, was disqualified under G.L. c. 151A, §§ 29 and 1. The Board accepts the claimant'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 claimant's appeal, we conclude that the review examiner's findings of fact are based on substantial and credible evidence in the record. Although the employer's witness testified that work had not been offered to the claimant since December of 2016, she testified that the claimant was generally refusing all hours offered to her and had indicated that she had been working with a former client. Without the claimant present during the hearing to explain what was going on with her employment and what reasons she had for not working for the employer, she has not shown that she was in a state of unemployment as of February 12, 2017.

However, we disagree with the result in Part IV of the decision. Although the review examiner found that the claimant was discharged on March 1, 2017, the review examiner made the claimant's disqualification indefinite under G.L. c. 151A, §§ 29 and 1. This is an error. As of March 1, 2017, the claimant's permanent separation is controlled by a different section of law, G.L. c. 151A, § 25(e). Therefore, an end date should be added to this issue.

The review examiner's decision is affirmed. The claimant is denied benefits for the period from February 12, 2017 through February 25, 2017. As of the week beginning February 26, 2017 (which is the week that contains the claimant's termination date), this issue no longer controls the claimant's eligibility for benefits. The parties should be aware that a separation issue has

been created (Issue ID 0022 6116 84), and the agency is in the process of adjudicating that issue. The claimant should be aware that further communications from the agency on that issue will be forthcoming. Her eligibility for benefits on her current unemployment claim will be affected by that decision.¹

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 12, 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

¹ As noted in the decision, the claimant did not certify for benefits on this claim in February of 2017. So, this decision, which is only in effect from February 12 to February 25, 2017, should not result in any overpayment of benefits.