

**Claimant's testimony, a text message, and a subsequent letter from a new employer established that the claimant quit his job in good faith to accept a new full-time, permanent position. When the new job's hours were subsequently reduced by the new employer, putting him in unemployment, the claimant was eligible for benefits under G.L. c. 151A, § 25(e).**

**Board of Review  
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**Issue ID: 0021 1702 77**

## **BOARD OF REVIEW DECISION**

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

The claimant appeals a decision by Matthew Shortelle, 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 February 8, 2017. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 22, 2017. 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 6, 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 remanded the case to the review examiner to take additional evidence as to whether the claimant quit his position with the employer to take a new, full-time, permanent job with a different employer, and as to whether the claimant quit due to unilateral and detrimental changes to his pay. Both parties attended the remand hearing. Thereafter, the review examiner issued his 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 disqualified from receiving unemployment benefits 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 review examiner's consolidated findings of fact show that the claimant quit his job after he was offered a full-time, permanent job with a different employer.

### **Findings of Fact**

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

1. In 2012 and 2015, the claimant suffered strokes. The strokes affect the claimant's cognitive thinking.
2. The claimant worked as a sales and floor helper for the employer, a seafood company, from September 6, 2016 through February 8, 2017.
3. The employer's Manager (the Manager) supervised the claimant.
4. Before beginning work, the employer's Owner offered the claimant \$18.00 per hour. The claimant refused the \$18.00 per hour offer. The Co-Owner offered the claimant \$20.00 per hour, told the claimant the employer would "see where" his review "goes," and the claimant agreed.
5. At the time the claimant began work, he believed the employer would give him a raise after his review.
6. No employer personnel guaranteed the claimant a raise after his initial review.
7. No employer personnel guaranteed the claimant a specific future hourly rate.
8. Before beginning work, the claimant provided the employer with financial information detailing his wage history and his financial needs.
9. Around January, 2017, the employer's business slowed and the claimant's hours were cut.
10. On January 2, 2017, the claimant completed a review of his employment. The employer changed the claimant's pay from \$20.00 per hour, to \$1,250.00 per week, with no overtime pay.
11. The employer notified the claimant he would be working up to fifty (50) to sixty (60) hours per week after January 2, 2017.
12. The claimant and the claimant's wife (the Wife) believed the change in pay to be permanent.
13. During the claimant's employment, the claimant asked to make more money.
14. During the claimant's employment, the Co-Owner told the claimant the winter season was slow and the claimant's pay would be revisited after the winter season in the spring of 2017.
15. The claimant and the Wife believed the employer misled them at the time he began work because he was not given the expected raise in January 2017.

16. Before January 13, 2017, the claimant spoke with the owner of an unrelated employer fish company (the Offeror) located in [Town A], Massachusetts.
17. Before January 13, 2017, the claimant and the Offeror discussed the claimant returning to work for the unrelated fish company, the potential terms of the claimant's employment with the unrelated fish company, the claimant's financial needs, and the claimant's refinancing on his home.
18. On January 13, 2017, the Wife texted the Offeror regarding the claimant's returning to work with the unrelated employer fish company, the meeting, the claimant's cognitive abilities, refinancing their home, and the unrelated employer fish company considering the claimant for employment.
19. The Wife's January 13, 2017 text messages do not contain any job offer from the Offeror or indicate the Offeror had offered the claimant employment before January 13, 2017.
20. On an unknown date after January 13, 2017, the Offeror offered the claimant permanent full time employment with the unrelated fish company, earning \$21.25 per hour and with the potential to work overtime. The Offeror asked the claimant to keep the offer of employment confidential.
21. On February 8, 2017, the claimant emailed the Owner his notice and indicated he would quit on February 25, 2017. The claimant emailed the Owner he was "moving on."
22. On February 8, 2017, the claimant told the Manager he was quitting to move to Connecticut and work for an unrelated seafood company.
23. On February 8, 2017, the employer accepted the claimant's resignation, told him he would not work his notice period, and told him the employer would pay his notice period.
24. The employer paid the claimant his regular wage for the period of February 8, 2017 through February 25, 2017.
25. The claimant worked for the unrelated fish company employer full time from February 6, 2017 through February 26, 2017.
26. On February 26, 2017, the unrelated employer reduced the claimant to part time hours.
27. On March 3, 2017, the claimant filed a claim for unemployment benefits with an effective date of February 26, 2017.

28. On May 30, 2017, the Offeror composed a letter detailing the offer of employment and the claimant's employment with the unrelated fish company after the initial unemployment hearing, denial of the claimant's benefits, and the claimant's alleged confusion regarding his employment with the unrelated employer at the initial unemployment hearing.
29. The Offeror's May 30, 2017 letter does not provide any specific information as to when an offer of employment with the unrelated fish company was made to the claimant.
30. As of the date of the unemployment hearings, the claimant remains employed with the unrelated fish company employer.

### CREDIBILITY ASSESSMENT

During the remand hearing the claimant testified he had been offered employment by the Offeror before quitting. The claimant testified he was confused at the initial hearing. Despite the letter not containing any specific dates and being created for the claimant's appeal of the original hearings decision, the Offeror's May 30, 2017 letter supports the claimant's testimony at the remand hearing. Although the Wife's texts do not indicate the Offeror made an offer of employment to the claimant as he testified on January 10, 2017, the Wife's texts do indicate the Offeror and the claimant had discussed his future employment with the unrelated fish company employer. As a result, based on the Offeror's letter corroborating the claimant's testimony at the remand hearing, it is concluded the claimant's testimony [that] he had accepted an offer of employment with the unrelated fish company employer in [Town A] when he quit his employment is credible.

### 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 ultimate 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 conclude that the claimant is not subject to disqualification, because he left his job with the employer to take a new, full-time, permanent job with a different employer and the new employer ultimately reduced his hours.

In his decision, the review examiner addressed two issues: the claimant's pay and the claimant's decision to quit to take a new job elsewhere. In his appeal to the Board, the claimant offered relevant evidence, which could have shown that he met his burden to show that he quit his job to accept other full-time, permanent employment. We remanded the matter back to the review examiner to take further evidence and testimony mainly about that issue.<sup>1</sup>

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<sup>1</sup> Because we conclude that the claimant is eligible to receive benefits on the ground that he quit his job to take a full-time, permanent job elsewhere, we need not discuss the claimant's complaints about his pay at any length.

Since the claimant quit his employment, we analyze his eligibility for benefits under G.L. c. 151A, § 25(e)(1), which provides, 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 . . . .

Under this statute, the claimant has the burden to show that he is eligible to receive unemployment benefits. However, a separate provision of law is applicable to someone who voluntarily quits his job and argues that he did so to accept a new job. This provision, also under 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.

Pursuant to this provision, the claimant also has the burden of proof. While the review examiner initially concluded that the claimant did not meet his burden under this statutory section, we now conclude otherwise.

Following the remand hearing, the review examiner made consolidated findings of fact which show that the claimant did leave his job with the employer for a new job. During the remand hearing, the review examiner reviewed at length various communications between the claimant and the new employer. Documentation was submitted from the new employer, showing that the claimant worked for the new employer soon after he quit his job with the instant employer. Based on this evidence, the review examiner found that, before he quit, the claimant had an offer of full-time, permanent employment with the new employer. This finding is supported, as is the review examiner's credibility determination which credited the claimant's argument that he quit to take the new job.

Relying on this offer of work, the claimant quit his job with this employer. He then began working for the new employer on or around the second week of February, 2017. After the claimant's hours were reduced at the new employer, he filed his claim for unemployment benefits. The findings of fact show that the claimant left his job with the employer for a new, permanent full-time job. Thus, he meets the requirements of the above-cited statutory provision, and he should not be subject to disqualification.

Finally, we note that the agency has a specific regulation in place regarding how charges are to be allocated in situations such as this one. 430 CMR 5.05(4) provides:

With respect to any claim filed, if any base period employer shall show to the satisfaction of the Commissioner that the worker became separated from his last

employment with such employer solely for the purpose of accepting work with another employing unit by which he had been hired, charges with respect to benefits paid to such a worker shall not be chargeable to such employer's account but shall be charged to the solvency account.

Pursuant to this regulation, the employer may contact the DUA's Employer Charge Unit to inquire as to whether charges may be removed from its account.

We, therefore, conclude as a matter of law that the review examiner's original decision to deny benefits is not based on substantial and credible evidence in the record or free from error of law, because the consolidated findings of fact show that the claimant left his job with the employer for a *bona fide* offer of new, full-time permanent employment with another employer, and he subsequently was put in unemployment by the new employer.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning February 5, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 27, 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](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.

SF/rh