

**Even though the temporary help firm employer instructed its employees to request a new assignment by calling an 800 number, the claimant satisfied the statutory requirement under G.L. c. 151A, § 25(e) to ask the employer for a new assignment before filing a claim when she asked the employer's human resource representative about a new assignment.**

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

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member**

**Issue ID: 0021 5297 05**

## **BOARD OF REVIEW DECISION**

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

The claimant appeals a decision by Allison E. Williams, 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 her position with the employer on March 24, 2017. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on April 22, 2017. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on May 31, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without showing good cause attributable to the employer or urgent, compelling, and necessitous reasons, and, thus, she 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 remanded the case to the review examiner to obtain further evidence from both parties. Both the claimant and the employer attended the remand hearing. 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 ineligible for benefits is supported by substantial and credible evidence and is free from error of law, where the record after remand shows that after the claimant's temporary assignment had ended, she asked her temporary help firm employer for a new assignment before filing her claim for benefits.

### **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 as a Freelancer for the employer, a temporary employment agency, from 11/30/15 until she separated from the employer on 3/24/17.
2. The client ended the claimant's assignment on 3/24/17.
3. On 11/19/15, the claimant acknowledged her receipt of the At Will Agreement, which informed the claimant that she was required to contact the 1-800 number immediately after the completion of any assignment for the purpose of requesting a new assignment and remain in contact with the company indicating availability for assignments and that her failure to do so will constitute a voluntary resignation that may affect her eligibility for unemployment benefits.
4. On 3/27/17, two calls were made and an email was sent to the claimant by employer [r]epresentatives with a message for the claimant informing her that her assignment had ended and that she needed to contact the employer through their 1-800 number to give her availability for another assignment.
5. The employer tried to contact the claimant to no avail.
6. On 3/28/17, the claimant called the Human Resource Client Care Specialist regarding a new assignment. The Human Resource Client Specialist told the claimant she needed to call in her availability to the employer's 1-800 number. She went into the office after being informed by the Human Resource Client Care Specialist that she needed to return her computer and badge from her last assignment.
7. The claimant did not contact the employer with her availability for reassignment until 4/4/17 when she called the 1-800 number because she had been looking for work with other agencies.
8. The claimant knew that she was required to contact the employer for additional work before filing for unemployment benefits. She had been provided written information of her requirement to contact the employer's 1-800 number once her assignment had ended for other work prior to filing for unemployment benefits. (Exhibit 5)
9. The claimant filed a claim for unemployment benefits on 3/28/17.
10. The claimant has been employed full time with another agency since 5/1/17.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 7, which states that the claimant did not contact the employer with her availability for reassignment until April 4, 2017, as it is misleading and conflicts with Consolidated Finding # 6. We accept this statement only insofar as it indicates that the claimant first called the employer's 1-800 number on April 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 disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

As the consolidated findings provide, the claimant stopped working for the employer, a temporary employment agency, when the client company that she was assigned to ended the assignment. Consolidated Findings ## 1 and 2. The unemployment statute imposes an affirmative obligation upon temporary help firm workers before they may qualify for benefits. G.L. c. 151A, § 25(e), provides, in pertinent part, 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.

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.

In the present case, the record shows that both parties were aware of their respective obligations under the statute. The employer provided the claimant with a written notice upon hire that she had to request a new assignment after completing another one. *See Consolidated Findings ## 3 and 8.* On March 28, 2017, prior to opening her claim for benefits,<sup>1</sup> the claimant asked the human resource representative for a new assignment. *See Consolidated Finding # 6.*

During the hearing, the employer seemed to argue that the claimant did not fulfil her obligation to contact the employer before filing a claim for benefits because she did follow its precise written instructions to call its 1-800 telephone number for a new assignment until the week after opening her claim. However, neither the statute nor the regulations require the worker to call an 800 number, or to follow any other specific procedure<sup>2</sup> to request a new assignment. The only obligation imposed upon a temporary employee such as the claimant, is simply to request another assignment. As we have previously stated, the statutory purpose underlying the requirement that a temporary help firm employee contact the employer for a reassignment prior to filing for benefits is to provide the employer with actual notice of an employee's availability for reassignment and the opportunity to offer a suitable reassignment so as to avoid the claimant from becoming unemployed. Board of Review Decision 0013 8756 65 (Mar. 26, 2015) (claimant complied with the notice requirement under G.L. c. 151A, § 25(e), and 430 CMR 9.04(8) when he asked for a new assignment two days before his layoff from his current assignment).

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<sup>1</sup> The claimant testified that she went to the employer's office to speak with the Human Resource Client Care Specialist and return her computer and badge before filing her unemployment claim. This testimony, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); *Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training*, 64 Mass. App. Ct. 370, 371 (2005).

<sup>2</sup> We note that under the regulation there is an obligation imposed upon an employer to utilize a method and manner for employees to request a new assignment that is "consistent with the normal method and manner of communication between the temporary employee and temporary employment firm."

The claimant stopped working for the employer on March 24, 2017, because the client company ended the assignment. Her employment thus ended due to lack of work. Since the claimant requested a new assignment prior to filing a claim for benefits, we conclude as a matter of law that she may not be disqualified pursuant to the temporary help firm provision under G.L. c. 151A, § 25(e). We further conclude that, because nothing in the record suggests that she engaged in misconduct, the claimant is eligible for benefits under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning March 26, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 24, 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.

AB/rh