

Claimant employee of a temporary placement firm was eligible for benefits where the temporary firm sent her an email stating that her assignment had ended and adding, “We will be in touch as soon as possible regarding another opportunity,” thus failing to offer her a new position at the time.

**Board of Review
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Issue ID: 0021 9932 58

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rose McDuffy, 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 was separated from her position with a client company of the employer job placement agency on May 19, 2017. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 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 November 2, 2017. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant had failed to contact the employer to ask for a new placement after completing her assignment and before filing for unemployment benefits 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. Neither party 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 was ineligible for benefits because she failed to contact the employer for a new placement after her assignment ended but before filing for unemployment benefits 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 for the employer, a staffing agency from April 27, 2017 to May 19, 2017.

2. The employer assigned the claimant to work as an embroidery support representative for a client company, an embroidery apparel company (the client).
3. The claimant worked Monday through Friday, 7:00 a.m. to 3:30 p.m., and was paid \$12.00 an hour. The claimant's immediate supervisor at the client was the floor supervisor (the supervisor).
4. The employer's policy requires employees to request new employment when an assignment ends. The claimant received the policy when she began working for the employer.
5. At the time the employer assigned the claimant to work for the client, the length of the assignment was open ended.
6. On May 19, 2017, the employer's on premise manager emailed the claimant informing her that her assignment with the client had ended as a result of the client's decrease in business.
7. The claimant did not respond to the on premise manager's email.
8. On May 20, 2017, the client arrived at her assignment and the client's security guard informed the claimant that her assignment had ended.
9. On May 20, 2017, the claimant did not contact any employer personnel for a new assignment.
10. On May 26, 2017, the on premise manager attempted to contact the claimant via telephone to inform her that the client company returned a sweater the claimant had left behind.
11. On June 1, 2017, the employer's staffing agent left the claimant a voicemail offering her new employment.
12. On June 8, 2017, another staffing agent called the claimant's home phone number and got in touch with the claimant's mother. The mother informed the staffing agent she would let the claimant know the staffing agent had called.
13. On June 28, 2017, the claimant reported to the Department of Unemployment Assistance personnel in a telephone fact finding when asked if she had been in contact with the agency since she last worked for them, "Yes I did call on Monday and cannot remember who I spoke with," "They said they would let me know."
14. The employer's receptionist informs the on premise manager of who comes to the location each day.

15. The employer's previous receptionist left her employment around March 2017.
16. The claimant quit her job when her assignment ended and she did not request new employment as required in the policy.

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 except for Finding of Fact # 16, which misapplies the statute as it pertains to communications between an employee of a temporary help firm and the employer itself and, thus, mischaracterizes the nature of the claimant's separation. 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 failed to satisfy the requirements of G.L. c. 151A, § 25(e).

Since the claimant was employed by a temporary help firm, we must consider whether the circumstances of her separation implicate the provision of G.L. c. 151A, § 25(e), concerning employees of temporary help firms. The review examiner initially denied benefits pursuant to this section of law, which states, 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 the assignment.

Under the above provision, a temporary worker who fails to request a new assignment prior to filing for unemployment compensation is deemed to have quit her employment and will be disqualified from benefits.

It is undisputed that the claimant's last assignment with the employer ended when the employer sent her an email on May 19, 2017, stating that its client company ended her employment due to a decline in business, adding, "We will be in touch as soon as possible regarding another opportunity." *See* Exhibit # 7. Notwithstanding this notice, the review examiner found that the claimant reported to work on May 20, 2017, and was informed by the client company's security staff that her assignment had ended.

In several prior decisions, the Board has interpreted this provision of the statute to require communication between the employer and the claimant at or near the end of an assignment, so that the employer has an opportunity to tender a timely offer of a new assignment to the claimant, and thus avoid the claimant's unemployment. *See, e.g.,* Board of Review Decision

0016 0869 84 (March 24, 2016); Board of Review Decision 0012 9652 36 (February 27, 2015); Board of Review Decision 0002 2757 65 (September 20, 2013); Board of Review Decision BR-113873 (April 25, 2011).¹

In this case, the employer temporary help agency was well aware that the claimant's job assignment had ended on May 19, 2017, because it sent an email to the claimant that the client no longer required her services. *See* Finding of Fact # 6. Although the claimant did not reply directly to the employer's email, the employer clearly had an opportunity to offer the claimant work and did not do so. Instead, it stated that it would contact her "as soon as possible regarding another opportunity." *See* Exhibit # 7. As in our earlier cases, we decline to interpret the statute to require a claimant to initiate redundant contact with the employer in order to comply with an unduly formulaic interpretation of the statute, when the apparent purpose of the statute has been served.

Furthermore, we decline to endorse an interpretation of the statute that requires the claimant to formally request reassignment when there is contact from the employer upon the completion of an assignment. Where the employer knows the claimant's assignment has ended at the time it is communicating with the claimant, it cannot stand on ceremony and wait for the claimant to formally ask for a new placement while promising it will get back to her "as soon as possible," as the employer apparently did here.

We, therefore, conclude as a matter of law that the claimant did not quit her employment, but instead, was separated because her assignment had ended and the employer failed to offer her suitable work to continue her employment. The claimant is not disqualified from receiving unemployment benefits, pursuant to G.L. c. 151A, § 25(e), under these circumstances.

¹ Board of Review Decisions 0016 0869 84 and 0002 2757 85 are published on the Board's website, www.mass.gov/dua/bor. Board of Review Decisions BR-113873 and 0012 9652 36 are unpublished decisions, available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending May 20, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 16, 2018



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.

JPC/rh