

Evidence supports conclusion that claimant, who quit his job with instant employer to take a better-paying full-time job with another employer, did so with a firm offer of employment from the new employer.

**Board of Review
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Issue ID: 0022 2452 12

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by A. 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 resigned from his position with the employer as of April 16, 2017. After a brief period of employment with another employer, he filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 26, 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 October 12, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant quit his employment without credibly having been offered a new full-time position prior to resigning his job with this employer and, thus, was disqualified under G.L. c. 151A, § 25(e). 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 take additional evidence regarding the timing of the claimant's notice of resignation from the instant employer and his offer of employment from his subsequent employer. Both parties 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 quit his job with the instant employer without a good faith offer of new employment on a permanent basis is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked as a Food & Beverage and Banquet Manager for the employer, a hotel, full-time from 10/12/16 until his separation on 4/15/17. The claimant was earning an annual salary of \$43,000.
2. The claimant resigned his position on 3/20/17 with the instant employer to take a permanent full-time position with a new employer.
3. On March 20, 2017, the claimant notified the instant employer that he was resigning his position to work with a new employer. (Exhibit # 3, page 4) The claimant informed the instant employer that he was leaving for better opportunities. The claimant told the instant employer his last day would be 4/2/17. The claimant told the instant employer this would be his last day because he was thinking of starting his new work on 4/3/17. The new employer never told him he would start early.
4. The Food and Beverage Director told the claimant that the General Manager wanted him to stay on until Easter. After being asked to stay until Easter, the claimant informed the new employer that he would start with them on 4/20/17. The claimant worked with the instant employer until his last day of 4/16/17.
5. The claimant had not received a written offer letter prior to submitting his resignation.
6. Between March 15th and 17th, the claimant had verbally been offered employment with the new employer. There was no discussion as to a start date for the claimant at that time. The General Manager only offered the claimant a position as a Banquet Manager with a starting salary of \$60,000.
7. In the new employer's offer letter, they did not provide a start date. The offer letter given to the claimant was not dated. The offer letter indicated that the claimant's salary with the new employer was going to be \$60,000 a year.
8. The claimant's prospective employer (the new employer) did not ask him to start working there before 4/20/17.
9. The claimant was asked by the instant employer to remain on with them until after Easter. The claimant then informed the new employer that he would start work with them on 4/20/17.
10. The claimant remained working with the instant employer until 4/16/17.
11. The claimant began work for the new employer on 4/20/17 and was terminated on 6/1/17. The new employer incorrectly indicated on the claimant's reference letter that he started work with them on 4/3/17 but correctly indicated that his employment had ended on 6/1/17. [Hearings Exhibit # 3, p. 5.]

12. The claimant offered no additional documentary evidence regarding his communications with the new employer, including but not limited to correspondence regarding job interviews, position duties, salary range, start date, and background checks.

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. However, we reject the review examiner's legal conclusion that the claimant did not establish that he had a good faith offer of permanent, full-time employment at the time he resigned from the instant employer, as outlined below.

The review examiner initially denied benefits pursuant to G.L. c. 151A, § 25(e), which 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.

Under G.L. c. 151A, § 25(e), it is the claimant's burden to establish that he left his job with the instant employer to accept a good faith offer of permanent, full-time employment with a new employer; and that he became separated from such new employment for non-disqualifying reasons.

Initially, the review examiner concluded that the claimant had not been offered his new job and was not given a start date until April 6, 2017 — after already having given his resignation to this employer on March 20, 2017. We remanded the case to take further evidence regarding the timing of the claimant's offer from the new employer and his resignation from the instant employer. After remand, we conclude that the claimant met his burden.

After remand, the review examiner found that the claimant received a verbal offer of employment from his new employer between March 15 and March 17, 2017. Although the claimant and his new employer had not yet formalized a start date, the new employer offered the claimant the position of banquet manager, with a starting salary of \$60,000.00 per year. This represented a substantial raise over the \$43,000.00 salary the claimant was paid by the instant employer.

After receiving the new employer's offer between March 15 and 17, 2017, the claimant submitted his resignation to the instant employer the following Monday, March 20, 2017. *See* Hearings Exhibit # 3, p. 4. In his resignation note, the claimant cited his offer of new

employment as a “Banquet Manager of a Fortune 500 Hospitality company,” thanked the instant employer for the opportunities afforded to him, made himself available to help with the transition of his duties, and noted that April 2, 2017, would be his last day of employment. The review examiner credited the claimant’s testimony that he gave this as his last day because he was hoping to begin his new job on April 3, 2017.

In response to the claimant’s resignation notice, the instant employer asked him to remain at his job through the Easter holiday, which was April 16, 2017. The claimant agreed to continue working until that date. His new employer sent a formal offer letter via email on March 27, 2017. *See* Remand Exhibit # 5, p. 2 and Hearings Exhibit # 3, p. 6. The formal offer confirmed the job title and starting salary of the verbal offer from March 15–17, 2017. The claimant accepted the offer via email on March 28, 2017, and provided a proposed start date of April 20 via email on March 29, 2017. *See* Remand Exhibit # 5, p. 1.

The claimant continued working for the instant employer through April 16, 2017, as the employer had requested. He began working for his new employer on April 20, 2017, as he had previously proposed. His employment with the new employer ended on June 1, 2017. *See* Hearings Exhibit # 3, p. 5. He filed for unemployment benefits after separating from that employer.¹

In view of all of the evidence presented, we conclude as a matter of law that, at the time the claimant gave his resignation notice to this employer, he had done so in good faith to accept new employment on a permanent, full-time basis. Although the claimant had not yet been given a formal written job offer, the verbal offer he was given was subsequently commemorated in writing about ten days later by his new employer. The new job included a substantial raise and a more prestigious title. Moreover, the claimant complied with instant employer’s request that he stay in his job for two additional weeks to help with its busy holiday schedule, reflecting a reasonable and flexible transition between his soon-to-be-former employer and his prospective employer.

We, therefore, conclude as a matter of law that the claimant left his job with the instant employer to accept a good faith offer of new employment on a permanent, full-time basis, from which he was ultimately separated for non-disqualifying reasons.

¹ We take administrative notice that the claimant’s separation from his subsequent employer was found by the DUA to be non-disqualifying. *See* DUA Issue ID # 0022 2457 22.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 15, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 16, 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

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