

**Claimant quit his job with the employer to accept an offer by a placement agency to place him in a full-time, one-year contract position. The new employment satisfied the permanent employment requirement under G.L. c. 151A, § 25(e).**

**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: 0023 1599 15**

## **BOARD OF REVIEW DECISION**

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

The claimant appeals a decision by 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 August 18, 2017. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on December 2, 2017. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on January 23, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons 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. Only the claimant responded. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's conclusion that the claimant is subject to disqualification is supported by substantial and credible evidence and is free from error of law, where the claimant left his job to accept an offer of full-time employment from a placement agency under a one year contract.

### **Findings of Fact**

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

1. The claimant worked as a full time field technology technician for the employer, a municipality, between 09/26/2016 and 08/18/2017, when he separated.
2. The claimant's direct supervisor for the instant employer was the senior technician. The claimant's upper level manager was the IT manager (manager).
3. The claimant's employment with the instant employer was permanent and ongoing.
4. In early August 2017, the claimant received an offer of employment from a placement company to work for another employer (employer A). The placement company representative informed the claimant that he would be an employee of employer A.
5. The position working for employer A was a temporary one (1) year contract to work in employer A's [Town A], Massachusetts location. The claimant had previously worked at this location.
6. The position working for employer A was as a PC technician, helping with computer issues that the helpdesk could not resolve.
7. The position working for employer A was to begin on 08/21/2017.
8. On 08/07/2017, the claimant tendered his verbal notice of resignation to the manager. On 08/08/2017, the claimant tendered his written notice of resignation to the manager, effective 08/18/2018. The claimant was resigning at this time because of his offer of employment in the position working for employer A.
9. The claimant's last physical day at work was 08/15/2017. The claimant called in sick on 08/16/2017 and 08/17/2017. The claimant had an approved vacation day on 08/18/2017.
10. The claimant began this new employment in the position working for employer A on 08/21/2017.
11. On 08/21/2017, the claimant learned that he was employed by the placement company and not by employer A.
12. The claimant became permanently separated from employment with the position working for employer A on approximately 09/12/2017.
13. The claimant attempted to return to work with the instant employer. The instant employer already filled the claimant's former position.
14. The claimant subsequently filed a claim for unemployment benefits.

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. Upon such review, the Board adopts the review examiner's findings of fact and deems 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 is disqualified from receiving benefits. We conclude that the claimant left his employment in good faith to accept new employment on a permanent, full-time basis within the meaning of G.L. c. 151A, § 25(e).

Voluntary resignations are governed by 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

Another provision under G.L. c. 151A, § 25(e), is also relevant in this case. It provides 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.

Thus, there is no disqualification if a claimant leaves his job to accept new employment on a permanent, full-time basis and then subsequently loses the new job through no fault of his own. The review examiner found that the claimant received an offer of full-time employment from a placement agency to work for another employer. The review examiner disqualified the claimant, taking the view that the new employment was not "permanent" because the placement agency offer was for a one-year contract.

We conclude that the review examiner's conclusion is inconsistent with prior Board of Review decisions governing temporary placement agencies.<sup>1</sup> The Board of Review has previously addressed this issue of whether employment by a temporary staffing agency constitutes permanent employment. In Board of Review Decision 0010 6162 10 (Sept. 29, 2014) and Board of Review Decision 0013 6102 77, (June 25, 2015),<sup>2</sup> the Board determined that employees who accept employment by a placement agency can reasonably expect their jobs to be just as "permanent" as any other job. They can expect the employer to continue to offer them work, even if it is in the

---

<sup>1</sup> See Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463-464 (1979) ("[I]f it were left to final decision by the several review examiners, consistent application of the statute to persons similarly situated would be impaired. Application of law to fact has long been a matter entrusted to the informed judgment of the board of review.").

<sup>2</sup> Board of Review 0013 6102 77 is an unpublished decision, a redacted copy of which is available upon request.

form of a succession of assignments. The claimant's employment with the placement agency was not governed by or limited to the duration of the initial assignment (in the claimant's case, one year). As the Board further stated, "We could think of no reason to exclude [a claimant] from unemployment benefits because his [new] employer was in the business of supplying contingent services to client companies." *See* Board of Review Decision 0010 6162 10.

The claimant did not have any reason to anticipate that the new employment would end after a few weeks. The record further indicates that he lost his new job under qualifying circumstances.<sup>3</sup> The review examiner found that the claimant tried to return to work with the employer, but that the employer had already filled the claimant's former position. Based on the facts of this case, the claimant was out of work through no fault of his own and should not be denied unemployment benefits.

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 25(e), the claimant left his employment in good faith to accept new full-time, permanent work with a different employer and that he became separated from such new employment under qualifying circumstances.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning August 13, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 27, 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](http://www.mass.gov/courts/court-info/courthouses)

---

<sup>3</sup> *See* Exhibit # 3, in which the claimant reported to the DUA that he was let go after injuring his wrist at the new job.

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.

SPE/rh