

The claimant was discharged for telling the employer he would look for another job if he didn't get a raise. The employer did not establish that the claimant's conduct constituted either misconduct or a policy violation.

**Board of Review
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Issue ID: 0023 1865 83

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 separated from his position with the employer on September 15, 2017. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on October 13, 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 April 7, 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 and, thus, was disqualified under G.L. c. 151A, § 25(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 provide the claimant with an opportunity to testify and present other evidence. Only the claimant and the employer's agent 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 decision, which concluded that the claimant voluntarily left employment without good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law, where, after remand, the examiner found that the claimant did not give two weeks' notice, but merely told the employer he would start looking for another job if he was not given a raise.

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 full time as a carpenter for the employer, a temporary staffing agency, from January 17, 2017, until September 15, 2017, when he was separated from employment.
2. The claimant was assigned to work at the employer's client company, a framing business.
3. The claimant worked a set schedule of hours Monday through Friday from 6:00 a.m. to 4:30 p.m. and Saturday from 6:00 a.m. to 11:00 a.m. He was paid \$14.50 per hour.
4. The claimant reported to the client company's Plant Supervisor.
5. The claimant's direct support at the staffing agency was the Staffing Specialist who worked on location at the client company.
6. The claimant worked for the client company through another staffing agency prior to being transferred to the employer on January 17, 2017.
7. Approximately two-weeks prior [to] September 2017, the client company provided the claimant with an employment application to hire the claimant directly.
8. The claimant told the Plant Supervisor he would not submit his employment application until he received a raise.
9. The claimant expected to receive a \$0.50 raise per hour.
10. The claimant was never promised a wage increase by the employer or the client company.
11. On September 13, 2017, the claimant told the Plant Supervisor he wanted a raise. The claimant punched out and left work prior to the end of his shift.
12. The Supervisor told the Staffing Specialist the claimant left work during his shift.
13. On September 13, 2017, the Staffing Specialist called the claimant. The claimant told the Staffing Specialist, if he didn't receive a raise he was going to look for other employment.
14. On September 14, 2017, the Staffing Specialist and the Plant Supervisor issued the claimant a written warning for having an "outburst and walking off the job" the day prior. The warning advised the claimant he would be discharged, if he had another "outburst." The claimant signed the warning.

15. On the morning of September 15, 2017, the claimant told the Staffing Specialist, if he didn't receive a raise he would look for other employment.
16. The claimant did not tell the Staffing Specialist to give the client company his two-week notice.
17. The Staffing Specialist notified the client company the claimant gave his two-week notice.
18. The client company told the Staffing Specialist to end the claimant's assignment.
19. The client company does not permit temporary workers to work a notice period.
20. At the end of the day on September 15, 2017, the Plant Supervisor instructed the claimant to meet with the Staffing Specialist.
21. The Staffing Specialist told the claimant he was being "let go."
22. The claimant asked if he was being let go by the employer and the client company.
23. The Staffing Specialist responded, "Yes, we're letting you go."
24. The Staffing Specialist did not offer the claimant another work assignment.
25. The employer worked with other client companies.
26. After the claimant's separation from employment, he spoke with a supervisor at the employer's [City A] location. The supervisor told the claimant he/she would speak to the Staffing Specialist.
27. The claimant never heard back from the employer.
28. On October 13, 2017, the Department of Unemployment Assistance (the DUA) issued the claimant a Notice of Approval of his unemployment benefits under Section 25(e)(2) of the Law effective September 15, 2017.
29. The claimant electronically provided a written statement to the DUA about his separation from employment. The claimant reported he did not give the employer his two-week notice of resignation and denied quitting work.
30. The employer electronically submitted written statements to the DUA about the claimant's separation from employment. The employer reported the claimant gave a two-week notice of his resignation to the Staffing Specialist on September 15, 2017.

Credibility Assessment:

At the initial hearing, which the claimant did not participate in, the Staffing Specialist testified the claimant asked her to give the client company his two-week notice on September 15, 2017. She also testified that the claimant told her he would continue to work until they found a replacement for him. Her testimony was conflicting. At the remand hearing, which the employer's agent participated in, but the Staffing Specialist did not, the claimant testified that he did not give his two-week notice of his resignation. Rather, he testified he said he would have to look for other employment, if he wasn't given a raise. This examiner deems it's not reasonable that the claimant would give a two-week notice and tell the Staffing Specialist he would work until they found a replacement for him. Especially, considering his dissatisfaction with being denied a raise. Therefore, it is concluded the claimant's testimony is deemed more 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 original 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we conclude that the consolidated findings warrant an award of benefits to the claimant.

After remand, the review examiner found that the claimant was discharged from his position with the employer. Therefore, G.L. c. 151A, § 25(e)(1) is not applicable in this case. The claimant's qualification for benefits is instead governed by G.L. c. 151A, § 25(e)(2), 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

The review examiner found that both the employer and the client company discharged the claimant after he notified the employer that he would look for other employment if the client company did not give him a raise. Nothing about this statement suggests misconduct or a policy violation. For this reason, we conclude as a matter of law that the employer did not establish that the claimant's discharge was attributable to either deliberate misconduct in wilful disregard of

the employer's interest or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer pursuant to G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending September 23, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 31, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

**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.

SVL/rh