

After remand, the evidence shows that the claimant left his job in order to accept new, full-time, permanent work with another employer, and then lost that job for non-disqualifying reasons. Therefore, he is eligible for benefits under G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0023 3614 04

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 September 28, 2017. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on November 8, 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 December 21, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having good cause attributable to the employer or presenting substantial evidence that he left to obtain new, permanent, full-time employment, and, thus, he 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 about the claimant's reason for leaving his job with the 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 is ineligible for benefits under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that he resigned in order to accept a new, permanent, full-time position with another employer.

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 part-time as a prep cook for the employer, a restaurant, from November, 2016, until September 28, 2017.
2. The claimant worked an average of 25 hours per week and earned \$13.00 per hour.
3. The claimant's direct supervisor was the employer's chef.
4. In mid-September, 2017, the claimant was offered full-time permanent employment at \$15.00 per hour from another employer.
5. The claimant accepted the offer of employment and was scheduled to begin working for the new employer at the end of September 2017.
6. On or around September 14, 2017, the claimant gave the chef his 2-week notice.
7. The claimant quit because he accepted new employment.
8. The claimant's last day of work for the instant employer was September 28, 2017.
9. The claimant began working for the new employer at the end of September 2017.
10. The new employer discharged the claimant in October 2017.
11. The claimant filed a claim for unemployment benefits effective October 15, 2017.

CREDIBILITY ASSESSMENT

I find both parties' testimony to be credible. The claimant's testimony at the remand hearing comports with the employer's testimony during the first hearing. Further, the claimant's testimony that he quit to accept new employment was consistent with his questionnaire submitted to the DUA prior to the original hearing.

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, based upon the additional evidence presented at the remand hearing, we disagree with the review examiner's original conclusion that the claimant is ineligible for benefits, as discussed more fully below.

Because the claimant voluntarily left his position with the employer to start a new job, his eligibility for benefits is properly decided under the following provisions of G.L. c. 151A, § 25(e):

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.

The express provisions of this section of law assign the burden of proof to the claimant.

Because the claimant did not appear for the original hearing, the review examiner did not have any details about the new job the claimant purportedly left for. She rightfully concluded that the claimant failed to sustain his burden. However, after remand, the consolidated findings show that the claimant resigned from his position with the employer in order to accept an offer of full-time, permanent work with a new employer at \$15.00 per hour, beginning right after his last day with the employer at the end of September, 2017. *See Consolidated Findings ## 4, 5, and 7–9.*

Consolidated Finding # 10 provides that the new employer subsequently discharged the claimant at some point in October, 2017. We take administrative notice of the fact that the DUA determined that the claimant's separation from the new employer was not under disqualifying circumstances. *See Issue ID # 0023 3611 92.*

Since the record now shows that the claimant left his job with the employer in order to accept new, permanent, full-time work with a new employer, and that he separated from that new employment for non-disqualifying reasons, we conclude as a matter of law that the claimant is eligible for benefits under G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 1, 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

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