

Claimant quit her job with the employer to accept new, permanent, full-time employment. Pursuant to 430 CMR 5.05(4), charges with respect to benefits paid to this worker may not be chargeable to such employer's account but shall be charged to the solvency account.

**Board of Review
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Issue ID: 0024 0567 42

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), to award the claimant benefits following her separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 5, 2018, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed and only the claimant attended the hearing. In a decision rendered on December 28, 2018, the review examiner reversed the agency determination, concluding that the claimant had quit her position with the employer to accept new full-time, permanent employment with a new employer and, thus, she was not disqualified under G.L. c. 151A, § 25(e). The Board accepts the employer's application for review.

Findings of Fact

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

1. The claimant worked full time for the employer from September 2017 until October 2017. The claimant worked the 1 p.m.–10 p.m. shift.
2. The claimant's supervisor was the employer's floor manager.
3. In or around early October 2017, the claimant made a request for a leave of absence. At that time, the claimant was the primary care taker for her elderly (86 years old) mother. The claimant was required to assist her mother with daily activities including medication administration and doctor's appointments.
4. The claimant's last day of work for the employer was October 6, 2018 [sic]. The claimant was given a leave of absence until November 2, 2017.

5. After her last day of work, the employer instructed the claimant to complete supporting paperwork for her leave of absence. The claimant did not complete the supporting paperwork.
6. In mid-October 2017, the claimant was offered new full time employment. The position was offered by a staffing agency as a temporary to permanent position. The claimant accepted the offer of employment because she believed the schedule and location would allow her to continue to care for her mother.
7. The claimant notified the employer that she would not be returning to work on November 2, 2017.
8. The claimant quit her employment with the instant employer to accept new employment.
9. The claimant began working for the new employer in the end of October, 2017.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record. We also believe that the decision to award benefits is free from any error of law affecting substantive rights.

The claimant is eligible for benefits based on language in G.L. c. 151A, § 25(e), which provides, in relevant part, the following:

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.

Although not addressed by the review examiner in her decision, DUA records confirm that after the claimant began work at the end of October, 2017, with her new employer, she was separated from that employment approximately one month later for non-disqualifying reasons. Ultimately, the claimant filed for benefits based on her separation from the new employer.

In light of that fact, the agency has a specific a regulation relating to how charges should be allocated when the above statutory provision applies. 430 CMR 5.05(4) provides the following:

With respect to any claim filed, if any base period employer shall show to the satisfaction of the commissioner that the worker became separated from his last employment with such employer solely for the purpose of accepting work with another employing unit by which he had been hired, charges with respect to

benefits paid to such a worker shall not be chargeable to such employer's account but shall be charged to the solvency account.

Because the review examiner found that the claimant quit her job with the employer to accept new, permanent, full-time employment with another employer, 430 CMR 5.05(4) may be applicable. The employer should contact the agency if it has any questions as to how this regulation could apply to charges related to the claimant's unemployment claim.

The review examiner's decision is affirmed. The claimant is eligible for benefits for the week beginning October 29, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 29, 2019



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. 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.

SF/rh