

The claimant's reasons for separating from this employer had no bearing on her eligibility for benefits, because the separation preceded her last 8 weeks of work before filing her claim. Thus, this was not an interested party employer under G.L. c. 151A, § 38(b).

**Board of Review
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Member
Michael J. Albano
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Issue ID: 0024 4509 57

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 her position with the employer and began working for a different, unrelated employer. Following her separation from the subsequent employer, she filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective January 21, 2018. On February 9, 2018, the DUA sent the employer in this case a Notice of Approval, indicating that the claimant was not disqualified from receiving benefits. 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 May 15, 2018.

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(e)(1). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review and remanded the case to the review examiner to allow the claimant an opportunity to provide evidence regarding her separation from this employer. Only the claimant 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 is subject to disqualification pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant quit her job to work full-time for a new employer, worked for the new employer for several months, and then filed her claim for benefits following her separation from the subsequent 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 began working for this employer, a non-profit organization for people with developmental disabilities, as a full-time personal care attendant on February 4, 2016.
2. On August 10, 2017, the claimant requested a leave of absence for medical reasons because she was having surgery. She spoke with a director about taking a medical leave. The director asked for a doctor's note substantiating the need for the leave, and the claimant provided a doctor's note.
3. The director approved the leave of absence beginning August 20. The last day the claimant worked for this employer was August 20, 2017.
4. The employer expected the claimant to return to work in early October 2017. There was no set return to work date; the claimant was told that she just needed a doctor's note to be able to return.
5. The claimant did not return to work because she found another full-time job that paid more. She began working at her new job on September 2, 2017.
6. The claimant called the director and told her that she would not be returning to work because she had found a new job.
7. The claimant left her job to accept full-time employment with a different employer.
8. The claimant worked for the new employer from September 2, 2017 to January 17, 2018. She filed a claim for unemployment benefits on January 23, 2018.

Credibility Assessment:

The claimant credibly testified at the remand hearing that she left work to accept an offer of full-time work for a different employer, and that she did in fact work for the new employer. The claimant's testimony was accepted. The claimant had more than 19 weeks of subsequent, full-time employment with the new employer after leaving her employment with the first employer.

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 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant's separation from this employer disqualifies her from receiving unemployment benefits.

Under G.L. c. 151A, § 38(b), the DUA must give notice of a claim to the claimant's most recent employing unit and to such other employers as the DUA shall prescribe. The DUA prescribes that such employing units include only interested-party employers, which are those employers with whom the claimant has had a working or employment relationship during the last eight weeks of employment prior to opening of a claim. *See* DUA Service Representative Handbook, § 1710.

In the present case, the claimant did not work for this employer during the last eight weeks of work prior to filing her claim on January 23, 2018. The last eight weeks of work prior to filing her claim for benefits on January 23, 2018, include the period from November 26, 2017, through January 20, 2018. Although the claimant was on a leave of absence beginning August 20, 2017, it is reasonable to conclude that the leave of absence was effectively over at or around the time that the claimant began working for the new employer on September 2, 2017.¹ The review examiner's findings of fact about the claimant's new employment (after her separation from the employer in the present case) are supported by the claimant's testimony during the remand hearing.² The findings show that the claimant worked for the new employer for over four months after she separated from the employer at issue in this matter. Because the claimant did not work for this employer in the last eight weeks of employment that she had prior to filing her claim, the reason for her separation has no bearing on her eligibility for benefits.³

We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 25(e), based upon her separation from this employer, because it was not an interested-party employer within the meaning of G.L. c. 151A, § 38(b).

¹ The DUA considers employees on a leave of absence to still have a continuing employment relationship with the employer, even if no work is actually being performed. *See* DUA Service Representative Handbook, § 1710. Here, the leave ended, and the claimant's separation from this employer occurred, at or around September 2, 2017.

² As noted by the claimant's attorney during the remand hearing, a DUA hearing took place with the new employer prior to the remand hearing here. A decision in that matter was rendered by the DUA on June 2, 2018. That decision indicates that the claimant worked for the new employer from September 2, 2017, through January 17, 2018. We take administrative notice of that decision, which was referenced during the remand hearing. *See* DUA Issue ID # 0024 4493 09.

³ Had this employer been an interested-party employer, the claimant still would have been eligible for benefits. G.L. c. 151A, § 25(e), provides, in relevant part that "[n]o disqualification shall be imposed if such individual establishes . . . 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." There is no question from the consolidated findings of fact that the claimant quit her job with this employer to accept new, full-time, and permanent work. DUA records in Issue ID # 0024 4493 09 also show that no disqualification has been imposed due to the claimant's separation from the new employer.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning August 14, 2018, 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.

SF/rh