

**A claimant quit his position for a new, full-time permanent position with a new employer, which was contingent upon him passing a background/CORI check. Because the claimant was aware of a crime he had pled guilty to several years before, he could not have reasonably thought that the employment offer would not be affected by the prior conviction.**

**Board of Review  
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**Issue ID: 0026 4397 01**

## **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 affirm.

The claimant resigned from his position with the employer on July 18, 2018. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 15, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 29, 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 make subsidiary findings of fact from the record regarding the claimant's testimony that he quit his job for new full-time employment with a different employer. 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 to deny benefits pursuant to G.L. c. 151A, § 25(e)(1), because the claimant did not show that he had been given a bona fide offer of new employment prior to quitting his job with this employer, is supported by substantial and credible evidence and is free from error of law.

### **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 as a full time cook for the employer from March 2018 until July 18, 2018. Prior to working for the employer, the employer ran a Criminal Offender Record Information (CORI) check on the claimant.
2. The clamant worked 40 hours per week at a rate of \$16.50 per hour. The claimant worked Monday through Friday, 6:30 a.m. until 3:00 p.m.
3. During his employment, the claimant began looking for alternative employment.
4. On July 2, 2018, a new employer offered the claimant a full time cook position at a rate of \$20.50 per hour. The offer letter indicated the claimant's start date would be July 23, 2018.
5. The offer letter also indicated in relevant part, "This offer of employment is contingent upon the successful fulfillment of the following requirements: New Employee Orientation attendance, Education Verification, Criminal Offender Record Information (CORI) check, and any other background checks satisfactory to the [Employer A] relative to the position offered to you, Clearance by Employee Occupational Health Services (EOHS) following a pre-employment health screen [and] Completion of the I-9 Employment Eligibility Verification Form."
6. The claimant understood his new employment was contingent upon completing the items contained in the offer letter.
7. Shortly thereafter, the claimant submitted to the health screening and completed all necessary paperwork including CORI paperwork.
8. The claimant had a reason to believe information would be contained on his CORI check because he plead guilty to and served probation for intimidation of a witness in August 2014.
9. On July 13, 2018, the claimant spoke with a representative from the new employer. The claimant was informed he needed to submit to a follow up health screening, was "all set" and would be receiving his schedule from the supervisor. At no time was the claimant informed that he passed the CORI check.
10. On July 17, 2018, the new employer sent the claimant an email containing his work scheduled for the week of July 23, 2018.
11. The claimant's last day of work for the instant employer was July 18, 2018. At no time did the claimant inform the employer that he was offered new employment or that he would not be returning to work.

12. On July 18, 2018, the claimant quit his employment to accept potential new employment.
13. On July 18, 2018, the claimant submitted to the follow up health screening for the new employer.
14. On or around July 18, 2018, the claimant received a call from the new employer regarding the information on his CORI check. The claimant was asked to meet with a representative from the new employer's human resources department on July 19, 2018.
15. On July 19, 2018, the claimant failed to report to work or notify the instant employer of his absence. The general manager attempted to contact the claimant regarding his whereabouts. At no time did the claimant respond to the general manager. The claimant did not report to work because he was scheduled to meet with the new employer. The claimant did not respond to the general manager's calls because he was still sleeping when he called.
16. On July 19, 2018, around 9:00 a.m., the claimant met with a representative from the new employer's human resources department. The representative asked the claimant about the August 2014 charge and for additional documents regarding it. The claimant was asked to come back and meet with the representative again on July 23, 2018.
17. The representative informed the claimant that the results of his CORI check did not mean he was not going to be offered employment but at that time his July 23, 2018 orientation date would be pushed back to the following week. At no time did the representative inform the claimant he "still had the job."
18. On July 20, 2018, the claimant failed to report to work or notify the instant employer of his absence because he was waiting to hear back from the new employer regarding his employment.
19. On July 20, 2018, the claimant went to the court house to obtain documentation regarding the 2014 charge for the new employer.
20. On July 20, 2018, the claimant received an email from the new employer that the position he applied for had already been filled.
21. On or around July 24, 2018, the new employer informed the claimant that it was unable to offer him employment.

#### Credibility Assessment:

During the hearing, the claimant was asked if he thought there would be a problem with his CORI check. When directly asked, the claimant gave a vague response indicating, "Not really because I haven't been in trouble in a while." The

claimant supported his response by indicating the instant employer also ran a CORI check after which he was offered employment. The claimant's initial vague response was contradicted by his later testimony that with other employment opportunities that were contingent upon a background check, ultimately he was not offered employment. The claimant stated during the hearing, "I've been at jobs before where they tell me I'll be hired contingent upon my background check and then it didn't work out and then I never received nothing or nothing like that." Based on the totality of the record, the claimant's admission that he plead guilty to intimidating a witness in August 2014, and that he had been refused employment due to a background check in the past, the claimant had reason to believe there would be a problem with his CORI check.

Furthermore, while the majority of the claimant's testimony surrounding his offer of employment from the new employer was supported by documentation, there was no supporting documentation surrounding the claimant's conversations with the new employer on July 13th, 18th and 19th. In regards to July 13, 2018, the claimant testified he spoke with the new employer and was told he was "all set" and passed the background check. While the new employer may have stated he was "all set," the claimant's testimony he was specifically informed he passed the background check is not credible. Knowing that the new employer was aware of the claimant's criminal record and had concerns with his record – which was apparent by the rescinding of the offer of employment – it is not credible that the new employer would falsely indicate he passed only to, 5 days later, notify him there was a problem. The claimant's testimony as to the dates on which he next spoke with the new employer are inconsistent. The claimant indicated he next spoke with a representative from the employer's human resources department on July 19, 2018 and was asked to attend a meeting on July 19, 2018. Based on the record, I conclude this conversation did not occur on July 19, 2018 but before, on or around July 18, 2018. The claimant testified on July 19, 2018 he did not attend work for the instant employer because he knew he was scheduled to have a meeting with the new employer around 9 a.m. Given that the claimant was scheduled to work for the instant employer at 6 a.m., it is more credible that he was notified of the meeting before July 19, 2018, the day it took place.

The claimant met with the new employer's human resources representative on July 19, 2018. Regarding this meeting, the claimant offered contradictory testimony. First the claimant indicated the representative informed him the information on his CORI check did not mean he was not going to get the job. The claimant later testified the representative informed him he still had the job. I find the claimant's original testimony as to how the representative characterized the claimant's potential employment more credible as the claimant went on to describe that he felt the representative "BSed" him and wasn't straightforward. In addition to being contradictory to his earlier testimony, the claimant's testimony that he was informed he still had the job is not credible because at that point it was clear the new employer was unsure what impact the claimant's criminal record would have on his future employment. The claimant's orientation date was pushed back and he was asked to supply the new employer with more information

regarding his criminal record by Monday, July 23, 2018. This review examiner does not doubt the above conversations took place but finds the claimant's testimony cannot be deemed completely credible based on the logic and contradictions.

### 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 agree with the review examiner that the claimant has not carried his burden to show that he is eligible to receive unemployment benefits.

When a claimant voluntarily leaves his employment, his eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), which provides, in relevant 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 . . . .

In this case, nothing in the record indicates that the employer did anything to cause the claimant to leave his job. Therefore, there is no basis to conclude that the claimant left his employment for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). However, the review examiner found that the claimant left his job with this employer to accept new employment. Consolidated Finding of Fact # 12. Therefore, we will consider the third paragraph under G.L. c. 151A, § 25(e), which states, in relevant part, 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.

By its express terms, this section of law places the burden of proof upon the claimant to show that he left his employment in good faith to accept new employment.

The review examiner found that on July 2, 2018, the claimant was offered a full-time, permanent position with a new employer. The claimant was given a start date for the new position of July 23, 2018. Consolidated Finding of Fact # 4. However, the full-time job offer was contingent upon several things: attendance at orientation, verification of the claimant's education, background checks including a CORI check, successful completion of a pre-employment health screening, and completion of the I-9 form. Consolidated Finding of Fact # 5. The claimant

knew that he would need to satisfy these conditions before he could start the new job. Consolidated Finding of Fact # 6. After the claimant submitted paperwork to the employer to complete the contingencies, he was told that he was “all set.” Importantly, the review examiner found that the claimant was never told that he had passed the CORI check. Consolidated Finding of Fact # 9. Eventually, the claimant did not start the new job, presumably because of the information contained within the CORI check. Consolidated Findings of Fact # 16–21.

We are confronted with the question of whether the claimant could have left his job in good faith to accept the new job, based upon a contingent job offer. We have had occasion to consider this issue before. In Board of Review Decision 0025 2670 85 (November 16, 2018), we stated that “if there was something that the claimant had done, or failed to do, such that the claimant could anticipate a problem in meeting the contingency, then that individual could not have been acting under a good-faith belief that he or she would be hired by the new employer.” Specifically, as to issues with a claimant’s background, we stated the following:

If the record showed that, at the time he resigned from the employer, the claimant knew of something in his background that would cause a potential employer to consider not hiring him, then we think he could not have had a good faith belief of being hired into the new job. On the other hand, if the potential employer took issue with something in the claimant’s past that he could not reasonably have anticipated would affect an employment decision, then we think that, given all of the other specific aspects of the job offer, the claimant could, in good faith, have believed that he was going to start the new job.

Id. Here, the claimant quit his position prior to finding out if he had passed the background checks. He did so, knowing that something would come up on his CORI check. After all, he knew that he had been arrested and had pled guilty to a crime in 2014. Consolidated Finding of Fact # 8. In light of this, and in accordance with our precedent, we conclude that the claimant did not quit his position with this employer with a good-faith belief that he would be hired by the new employer. Because he was aware of a criminal conviction on his record, he could not reasonably believe that it would not affect a potential employer’s decision to hire him. The claimant would not have had a good-faith belief that all contingencies were met to the best of his ability such that he reasonably could think that he would begin his position as laid out in the offer letter.

We, therefore, conclude as a matter of law that that the review examiner’s decision to deny benefits is supported by substantial and credible evidence and free from error of law, because the claimant failed to carry his burden to show that he quit his position with good cause attributable to the employer or that he quit his job in good faith to accept a new, full-time job with a new employer. He is ineligible for benefits under G.L. c. 151A, § 25(e)(2).

The review examiner’s decision is affirmed. The claimant is denied benefits for the week beginning July 15, 2018, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 27, 2019**



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](http://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