

The 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 claimant may not be chargeable to such employer's account but shall be charged to the solvency account.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0048 8474 21

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 July 18, 2020, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed and both parties attended the hearing. In a decision rendered on February 9, 2022, the review examiner affirmed 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.

The issue on appeal is whether the review examiner's decision, which concluded that the claimant left her *per diem* job with the employer for her other new permanent full-time employment with another employer, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked as a licensed practical nurse (LPN) for the employer, a long-term care facility, between January 16, 2008, and July 1, 2020, when she separated.
2. In 2008, the claimant was hired as a full-time employee. The claimant was earning \$25.50 per hour.
3. The claimant's immediate supervisor with the instant employer was the director of nursing (supervisor).
4. Beginning in April 2020, the claimant started working full-time, thirty-two (32) hours per week, earning \$55.00 per hour, for another employer (Employer A).

5. In April 2020, the claimant requested a change in her full-time status with the instant employer. The claimant's work status was changed to per diem, and she was required to work at least twenty-four hours per week.
6. Sometime after starting work with Employer A, the claimant started getting more patients and her work hours increased to at least forty (40) hours each week with the instant employer.
7. The claimant felt overwhelmed and was unable to continue working with Employer A and fulfill her *per diem* hours with the instant employer. As a result, she decided to quit her per diem employment with the instant employer to focus on her full-time job with the primary employer.
8. The claimant's last shift worked with the instant employer was on June 9, 2020.
9. On July 1, 2020, the claimant submitted a letter to the instant employer, informing them that she could no longer fulfill the per diem contractual hours.
10. On July 10, 2020, shortly after quitting her employment with the instant employer, the claimant was laid off from employer A due to a lack of work.
11. When she quit her job with the instant employer, the claimant was not aware that she would be laid-off by employer A due to a lack of work.
12. The claimant submitted an unemployment claim effective June 28, 2020, with a benefit year end of June 26, 2021. The claimant's base period is April 1, 2019, to March 31, 2021.

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.

Given the record before us, we believe that the claimant's eligibility for benefits is governed by 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.

The review examiner's findings establish that the claimant quit her *per diem* position with the instant employer to focus on her full-time job with another employer. The record before us

indicates that the claimant did so because the other employer guaranteed the claimant regular full-time hours at a higher rate of pay. *See* Findings of Fact ## 2, 4, and 5. The record further shows that, after the claimant began work with her new employer in April, 2020, she separated from that job on July 10, 2020, due to being laid off. *See* Finding of Fact # 10. Ultimately, the claimant filed for benefits based on her separation from the new employer. *See* Finding of Fact # 12. On the record before us, we believe the claimant quit her job with the employer to accept new, permanent, full-time employment with another employer and became separated from such new employment for good cause attributable to the new employing unit. Consequently, the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

We further note that the DUA has a specific regulation relating to how charges should be allocated when the above statutory provision applies. This regulation set forth at 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 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 June 28, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 29, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT 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.

MJA/ih