

Where claimant quit her employment in order to accept a new part-time job, she is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0060 9418 60

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 unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant resigned from her position with the employer effective November 14, 2020. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 23, 2021. The employer 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 awarded benefits in a decision rendered on March 23, 2021. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons and, thus, was entitled to benefits under G.L. c. 151A, § 25(e). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 separated involuntarily for urgent, compelling, and necessitous reasons to accept a *bona fide* offer of new employment, 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 part-time for the instant employer, a child care staffing company, as a caregiver, beginning July 11, 2019. The claimant was paid \$17.00 per hour.
2. The claimant worked as a "placement nanny" with one individual family (Family A), 20-25 scheduled hours per week.

3. On April 27, 2020, the claimant filed a claim for unemployment insurance benefits with the Department of Unemployment Assistance (DUA) with an effective begin day of April 19, 2020, and an effective end date of April 17, 2021.
4. In July 2020, the claimant notified the employer she would be unable to work her “placement nanny” position, 20–25 scheduled hours per week with Family A, beginning the Fall of 2020.
5. The claimant, on September 8, 2020, began full-time attendance at a college.
6. In September 2020, the claimant transitioned from a “placement nanny” to “back-up care.”
7. “Back-up care” consisted of the claimant notifying the employer of the hours she was available to work. The employer would notify the claimant if they had hours which met her availability.
8. As “back-up care”, the claimant was not guaranteed any hours of work.
9. The claimant worked about 17 hours per week as “back-up care.”
10. In mid-October, 2020, the claimant secured new employment (NE) with an applied behavioral analysis provider.
11. The claimant was to be given a set schedule with guaranteed hours which accommodated her school schedule following training.
12. The claimant was to be scheduled for 30 hours per week with some hours on-site and some hours in clients’ homes.
13. The claimant would have less travel to clients’ homes with her NE.
14. The claimant’s rate of pay with NE was set at \$21.00 per hour.
15. On October 31, 2020, the claimant by email and text notified the employer she was leaving her employment effective November 14, 2020.
16. The claimant’s last day physically worked for the employer on November 11, 2020.
17. The claimant left her employment with the instant employer for new employment with NE.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant separated involuntarily for urgent, compelling, and necessitous reasons and is entitled to benefits.

When a claimant initiates her separation from employment, we consider her eligibility for benefits under G.L. c. 151A, §§ 25(e) and 25(e)(1). G.L. c. 151A, § 25(e)(1), provides in pertinent 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

A separate provision under G.L. c. 151A, § 25(e) provides, in pertinent part, as follows:

. . . An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

We agree that nothing in the record indicates that the employer did or said anything to cause the claimant to leave her job. Therefore, there is no basis to conclude that the claimant left her employment for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). The review examiner's conclusion mischaracterized the claimant's separation as involuntary for urgent, compelling, and necessitous reasons, as nothing in the record indicates such reasons. However, where the claimant asserted that the reason she left was in order to accept a new job, our conclusion relies upon the third paragraph under G.L. c. 151A, § 25(e), which states, in pertinent 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 she left her employment in good faith to accept new, full-time employment.

In interpreting the meaning of this statutory provision, we are mindful that the purpose of the unemployment statute is to provide temporary relief to people who lose their jobs "through no fault of their own." Cusack v. Dir. of Division of Employment Security, 376 Mass. 96, 98 (1978) (citations omitted). Consistent with the intent of this section of law, the Board has held

that a claimant who resigns employment in good faith to accept new employment on a permanent, full-time, basis may be eligible for benefits if they separate from the new employer through no fault of their own¹. See Board of Review Decision 0012 7692 26 (November 12, 2014)².

Following this precedent, the claimant was offered and accepted a part-time position, working 30 hours per week for her new employer. Finding of Fact # 12. The claimant had already reduced her schedule with the instant employer to *per diem* status in order to accommodate her full-time attendance in college beginning on September 8, 2020. Findings of Fact ## 4–9. Her new part-time job also had a schedule that could accommodate the claimant’s full-time school schedule. Finding of Fact # 11. However, as the claimant’s new position was also not full-time, she does not meet her burden to show that she had a *bona fide* offer of permanent, full-time employment at the time she resigned from the instant employer. See Board of Review Decision 0043 5358 71 (Feb. 18, 2021).

We, therefore, conclude as a matter of law that the claimant has failed to satisfy her burden to show that she left her employment in good faith to accept new employment on a permanent full-time basis within the meaning of G.L. c. 151A, § 25(e).

The review examiner’s decision is reversed. The claimant is denied benefits from the week beginning November 8, 2020, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

N.B.: Where the claimant began attending school on a full-time basis on September 8, 2020, the DUA should investigate and adjudicate the claimant’s availability for full-time work as of that date, pursuant to G.L. c. 151A, § 24(b).

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 28, 2022



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

¹ Under circumstances where a claimant quits to accept new employment elsewhere, the former employer should not be charged for the claimant’s benefits if they are a contributory employer and responded timely and adequately to requests for information during the adjudication process. See 430 CMR 5.05(4).

² Board of Review Decision 0012 7692 26 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

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.

JPCA/rh