

**Temporary help firm employee filed her claim for benefits while out sick, before her employer terminated her assignment and before contacting the employer to request reassignment. She is, therefore, deemed to have voluntarily left her employment pursuant to G.L. c. 151A, § 25(e). As she did not show that she left for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances, she is ineligible for benefits under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0062 5931 16**

### 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 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 October 18, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to obtain additional information relating to the circumstances surrounding the claimant's separation. Both parties 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 was eligible for benefits because her frequent absences did not constitute deliberate misconduct in wilful disregard of the employer's interest as the claimant was absent from work due to circumstances beyond her control, 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 assessment are set forth below in their entirety:

1. From June 23, 2020, to January 21, 2021, and then July 6, 2022, to July 12, 2022, the claimant worked full-time as a warehouse associate for manufacturing companies. The claimant was employed by the staffing agency.
2. The employer provided the claimant with an Attendance Policy at the time of hire stating: “failure to contact [the employer] for reassignment before filing a claim for Unemployment Insurance benefits may also result in the denial of those benefits as you may still be considered an employee of [the employer] even though you are not currently on assignment.”
3. The same attendance policy further stated read [sic] , “Excessive or unexcused absences or tardiness may result in termination of your employment...” This was to ensure employees report to work for their scheduled shifts.
4. The claimant signed the attendance policy on June 22, 2020. The claimant understood that she was required to contact the staffing agency for another assignment once a previous assignment ended.
5. The claimant was aware that the employer expected her to report to work for her scheduled shift.
6. The claimant’s rate of pay was \$15 per hour.
7. The claimant reported to her staffing agency supervisor and to her warehouse supervisor.
8. The claimant’s first assignment with warehouse A was from June 23, 2020, to July 7, 2020.
9. The claimant’s second assignment with warehouse B was from July 20, 2020, until January 21, 2021. The claimant was a packing technician.
10. The claimant was terminated from the second assignment due to attendance issues.
11. The claimant has diabetes.
12. The claimant left early due to feeling sick on August 13, 2020.
13. The claimant was absent on August 24, 2020, due to a car issue. The claimant was absent on August 26, 2020, due to a family emergency.
14. The claimant was absent on September 9, 2020, due to feeling ill. She was absent again on September 15, 2020, due to feeling ill and was told to get a [COVID]-19 test and was told she could not return to work until she received a negative result.

15. The [COVID]-19 test was a PCR test which took about 3–4 days to get the results. The claimant was absent from work while waiting her [COVID]-19 results.
16. The claimant returned to work on September 21, 2020.
17. The claimant was absent from work on October 22, 2020, due to soreness in her hands.
18. The claimant was absent from work on December 2, 2020, due to soreness in her hands.
19. Except for August 24, 2020, the claimant always notified her staffing agency supervisor and her supervisor at the warehouse site that she was not able to come to work.
20. The claimant called out of work on January 4, 2021, because she was experiencing a chest cold. The claimant subsequently tested positive for [COVID]-19 and, as a result, remained out of work for a couple of weeks.
21. There was no disciplinary history for the claimant.
22. On January 21, 2021, the employer ended the claimant’s assignment because she had remained out of work since January 4, 2021.
23. The claimant filed a claim for unemployment benefits effective January 17, 2021.
24. On January 28, 2021, the employer’s recruiter offered a new job assignment to the claimant at \$15 per hour, “Assignment C.”
25. The claimant did not accept Assignment C because the commute was too long.
26. It is unknown whether the claimant or the employer’s recruiter initiated the contact on January 28, 2021.
27. Employees are permitted to decline assignments. The staffing agency’s recruiters will continue to look for other assignments that fit within an employee’s requests.
28. On March 18, 2021, the claimant contacted the staffing agency’s recruiter and requested a job assignment.
29. On March 30, 2021, the staffing agency offered the claimant an assignment in Weymouth for \$15 per hour. The claimant did not accept the assignment.
30. The next assignment the claimant accepted was on June 24, 2021.

### Credibility Assessment:

The employer provided credible documentation and testimony showing that the claimant was informed about her responsibility to request another assignment when the previous assignment ended. The claimant understood her obligation to contact the staffing agency once an assignment ended. Furthermore, where neither the claimant nor the staffing agency's recruiter could definitively determine who initiated the contact regarding a new job assignment on January 28, 2021, whomever initiated the that contact remains unknown.

### 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 consolidated 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 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was entitled to benefits.

The review examiner concluded that the claimant was not discharged for deliberate misconduct in wilful disregard of the employer's interest, because she had shown her absences were a result of circumstances beyond her control. In so holding, the review examiner improperly analyzed the claimant's eligibility for benefits based upon the reasons for which she separated from her previous assignment with the client. Even when the claimant is assigned to work for a client, she remains employed by the temporary help agency that provided her with that placement. Therefore, her eligibility for benefits is based on the circumstances surrounding her separation from the instant employer.

Following remand, the review examiner found that the claimant was eligible for reassignment through the employer after her previous assignment ended on January 21, 2021. Consolidated Findings ## 22, 24, 27, and 28. As the claimant was a temporary help firm employee, her eligibility for benefits must be analyzed under the following provision of G.L. c. 151A, § 25(e), which states, in pertinent part, as follows:

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

In addition, the regulations found at 430 CMR 4.04(8) provide, in pertinent part, as follows

(b) Unless the claimant satisfies the provisions of 430 CMR 4.04(8)(c), the commissioner shall determine that the claimant has voluntary quit employment if:

1. the claimant was employed by a temporary help firm; and
2. the temporary help firm advised the claimant in writing as provided in 430 CMR 4.04(8)(e) of the need to contact the temporary help firm for reassignment upon completion of an assignment; and
3. the temporary help firm submits information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.

(c) The claimant may avoid the commissioner's determination in 430 CMR 4.04(8)(b) above if the claimant shows that he/she:

1. did request another assignment; or
2. did not receive written notice from the temporary help firm of the obligation to request another assignment; or
3. had good cause, as determined by the commissioner, for failing to request another assignment.

(d) The request for a new assignment must be made by the claimant upon completion of the current assignment and before filing an initial (new or additional) claim for benefits.

The Board has interpreted this provision of G.L. c. 151A, § 25(e), to require communication between the employer and the claimant at or near the end of an assignment, so that the employer has an opportunity to tender a timely offer of a new assignment to the claimant, and thus avoid the claimant's unemployment. *See, e.g.*, Board of Review Decision 0031 1199 07 (Oct. 30, 2019); Board of Review Decision 0016 0869 84 (Mar. 24, 2016); Board of Review Decision 0002 2757 65 (Sept. 20, 2013).

Following remand, the review examiner found that the claimant was provided with written instructions to contact the employer upon the end of an assignment. Consolidated Findings ## 2 and 4. Therefore, the claimant's eligibility turns on whether she contacted the employer for the new assignment prior to filing a claim for benefits.

A review of UI Online, the DUA's electronic recordkeeping database, shows that the claimant filed her claim for benefits on January 22, 2021. As the parties did not discuss reassignment until January 28, 2021, several days after the claimant submitted her initial application for benefits, the statute requires that we deem the claimant to have already quit her employment. *See* Consolidated Finding # 24.

Pursuant to G.L. c. 151A, § 25(e)(1), a claimant who voluntarily leaves employment is eligible for benefits only if she can show that she left her employment either for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons. No such evidence was presented in this case.

We, therefore, conclude as a matter of law that the claimant is deemed to have voluntarily left her employment. We further conclude that she did not show she left either for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week of January 17, 2021, 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.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 21, 2023**



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  
(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.

LSW/rh