

**The claimant resigned her employment with the instant employer, a temporary help agency, to accept a full-time contract-to-hire position with a previous employer. The claimant's previous experience with this employer and the nature of the terms of employment offered indicate it was a permanent position within the meaning of G.L. c. 151A, § 25(e). As the claimant then separated from this position due to a lack of work, she is entitled to benefits.**

**Board of Review  
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**Issue ID: 0071 2116 98**

### 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 affirm.

The claimant separated from her position with the employer on or about February 22, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 9, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on December 14, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant resigned her employment to accept new employment on a full-time basis and, thus, was not disqualified 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 remanded the case to the review examiner to obtain subsidiary findings of fact relating to the reason the claimant resigned her employment. Thereafter, the review examiner issued his 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 entitled to benefits because she resigned her position with the instant employer to accept new full-time employment, is supported by substantial and credible evidence and is free from error of law, where the new employment was a three-month contract to hire position with a previous employer.

### Findings of Fact

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

1. The claimant worked for the instant employer, a temporary staffing agency, as a full-time assembler from 2/8/2021 until her last physical day of employment on 2/18/2021.
2. Upon being hired, the claimant was informed in writing that upon completion of any temporary assignment, she must contact the employer for an additional assignment prior to filing for unemployment benefits.
3. On 2/18/2021, the client company notified the claimant that her assignment had ended.
4. The claimant did not reach out to the employer for a new assignment.
5. On 2/19/2021, the employer offered the claimant a new assignment for a contract to hire position that was to begin on 2/23/2021.
6. The claimant accepted this assignment when first offered by the employer.
7. The claimant's prior employer agreed to rehire the claimant full-time with the claimant immediately returning to work.
8. The claimant was specifically hired for a three-month full-time contract to hire position with her previous employer.
9. The claimant called the employer at some point after accepting the new assignment, but before she was scheduled to start the new assignment and informed the employer that she was going to return to work for previous employer.
10. Subsequently on 3/21/2021, the claimant was laid off from the new employment with her previous employer.
11. The claimant filed her unemployment claim on 3/24/2021, which was established with an effective date of 3/21/2021.

### 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 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant was entitled to benefits.

The review examiner initially awarded benefits pursuant to G.L. c. 151A, § 25(e), which provides, 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.

Under G.L. c. 151A, § 25(e), it is the claimant's burden to establish that she left her job with the instant employer to accept a good faith offer of permanent, full-time employment with another employer and that she became separated from such new employment for non-disqualifying reasons.

The claimant resigned from the instant employer because she had accepted a new, full-time three-month contract to hire position with an employer for whom she had previously worked. Consolidated Finding # 8. As the claimant was later laid off from this new position due to a lack of work, the record indicates that she separated from this new position for good cause attributable to the new employing unit as meant under the above provision. Consolidated Finding # 10. Given these findings, the question of the claimant's eligibility then becomes whether the position she accepted from her previous employer was "permanent" within the meaning of G.L. c. 151A, § 25(e).

The claimant resigned her position with the instant employer to accept a three-month "contract to hire" position with a previous employer. Consolidated Finding # 8. As with other temporary-to-permanent positions, this employment arrangement offered the claimant a full-time job for a limited duration with the potential of ongoing employment thereafter.

In considering the eligibility of other claimants who have resigned under similar circumstances, the Board has declined to categorically exclude all jobs classified as temporary-to-permanent from the definition of "permanent," as it is used in G.L. c. 151A, § 25(e). Board of Review Decision BR-108951 (July 29, 2009). As few, if any, jobs are truly "permanent" in the sense of guaranteed lifetime employment, we believe the term "is most reasonably interpreted to mean 'indefinite,' *i.e.*, 'lacking precise limits; uncertain, undecided.'" Board of Review Decision 0010 6162 10 (Sept. 29, 2014) (*quoting American Heritage College Dictionary*, 4<sup>th</sup> Ed., 2004). Therefore, the correct approach in determining whether any position is "permanent" as it is used in G.L. c. 151A, § 25(e), "is to look to determine based on the actual facts and circumstances of each case whether the new job, irrespective of the label attached to it, has a reasonable probability of continuing for a significant or indefinite period of time." Board of Review Decision BR-108951 at p. 4.

In this case, we can reasonably infer that this previous employer wanted the claimant to return because she was familiar with the work, it valued her as an employee, and it anticipated that she would be able to succeed in the long run. Further, the claimant's uncontested testimony was that she had sought out this opportunity with her previous employer both to further her work experience outside of a factory setting, and because she knew she would have a reliable and financially feasible means of commuting to and from work.<sup>1</sup> She had no reason to believe that the job would end after only a few weeks. More importantly, the terms of the new position offered to the claimant

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<sup>1</sup> The claimant's uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

had not been characterized as purely temporary, but rather one that would, within a three-month period, likely lead to long-term employment. See Consolidated Finding # 8. Under the circumstances, we believe the record supports a conclusion that the position the claimant accepted with her previous employer was “permanent” within the meaning of G.L. c. 151A, § 25(e).

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 25(e), the claimant left her employment in good faith to accept new full-time, permanent work with a different employer and that she became separated from such new employment for good cause attributable to the new employing unit. In addition, we note that, pursuant to 430 CMR 5.05(4), the employer shall not be charged for the claimant’s benefits.

The review examiner’s decision is affirmed. The claimant is awarded benefits for the week of February 18, 2021, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 11, 2023**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. 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