

**It was error to award benefits to a claimant who resigned to accept a new full-time employment, where there is nothing in the record to indicate she had either good cause attributable to the employer, urgent, compelling, and necessitous reasons for leaving, or that she subsequently separated from the new job for good cause attributable to the new employing unit. She is disqualified pursuant to G.L. c. 151A, § 25(e)(1), beginning the week after leaving her old job.**

**Board of Review  
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**Issue ID: 0071 8303 09**

### 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 we affirm in part and reverse in part.

The claimant resigned from her position with the employer on July 31, 2021. She had previously filed a claim, effective November 20, 2020. In a determination issued on September 10, 2021, the DUA awarded benefits beginning July 25, 2021. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner modified the agency's initial determination and awarded benefits beginning July 31, 2021, in a decision rendered on October 19, 2022. We accepted the employer's application for review.

The review examiner awarded benefits pursuant to G.L. c. 151A, § 25(e)(1), based upon the fact that the claimant voluntarily left her employment in good faith to accept a new permanent, full-time job. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that leaving employment in good faith to accept new permanent full-time work is sufficient to render the claimant eligible under G.L. c. 151A, § 25(e)(1), 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 full-time occupational therapy assistant for the instant employer, a contract rehabilitation company, from 2/8/2021 until her last physical day of employment on 7/31/2021.

2. The claimant accepted an offer for a full-time management position with higher wages from a new employer.
3. The new job was a permanent full-time position with a start date of 8/1/2021.
4. On 7/13/2021, the claimant informed the instant employer that she was quitting because she accepted a new job in management with higher wages. The claimant told them that her last day of work would be 7/31/2021.
5. The claimant would have continued to work for the instant employer if she did not receive the new offer of employment with higher wages.
6. On 8/1/2021, the claimant began working for the new employer.
7. On 12/24/2020, the claimant filed an unemployment claim effective 11/29/2020.

### 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 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 reject the review examiner's legal conclusion that the claimant's separation from the employer renders her eligible for further benefits on her claim.

Since the claimant resigned from her job with the employer, we must decide her eligibility for benefits pursuant to 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 . . . [or] if such individual established 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. . . .

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.* (Emphasis added.)

These statutory provisions expressly assign the burden of proof to the claimant.

Finding of Fact # 4 provides that the reason the claimant resigned was because she had accepted a new job with a different employer. As such, we agree that her reason for leaving was not for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances. Even if this new job was permanent, full-time employment, there is nothing in evidence to indicate that the claimant subsequently separated from her new job for good cause attributable to the new employing unit. Without this, it was erroneous to conclude that the claimant satisfied her burden to qualify for benefits after resigning from the employer under the separate provision above.

The findings further provide that the claimant continued working for the employer until July 31, 2021, and started this new job on August 1, 2021. Findings of Fact ## 4 and 6. Since she continued to work for the employer through the week ending July 31, 2021, she may not be disqualified under G.L. c. 151A, § 25(e)(1), until the week after that separation, the week beginning August 1, 2021.

Finally, we note that the DUA's electronic database, UI Online, shows that the claimant did not certify for any benefits after July 31, 2021. This means that our decision will not result in the claimant having to repay any overpaid benefits, and it means that the employer will not be charged for any benefits as a result of her separation.

We, therefore, conclude as a matter of law that the claimant did not sustain her burden to show that she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), based upon her separation from the employer.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits, but not until the week beginning August 1, 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.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 29, 2022**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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.

AB/rh