

The employer discharged the claimant when it stopped scheduling her for work. It's asserted reason that it did not believe that she intended to stay beyond the summer is not misconduct or a policy violation. Therefore, she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 0077 4641 49

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on June 13, 2022. She filed a claim for unemployment benefits with the DUA, effective July 10, 2022, which was approved in a determination issued on July 30, 2022. The employer 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 denied benefits in a decision rendered on February 15, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's employment status during the relevant period. 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 voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the employer initially accommodated the claimant's request to continue working in a part-time capacity, and subsequently stopped offering the claimant work.

Findings of Fact

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

1. The claimant worked as a full-time department manager for the employer, a retail store, from November 9, 2021, until June 13, 2022, when she separated.
2. The employer considers full-time work to be 30 or more hours per week.
3. The claimant worked over 30 hours per week at an hourly rate of \$18.00.
4. The claimant's immediate supervisor was the store manager.
5. The claimant's job duties included maintaining visual displays, supervising staff, training staff, managing payroll, and being a keyholder to open the employer's store.
6. The claimant injured her right hand while breaking down a display on or about May 3, 2022.
7. The claimant did not seek immediate medical attention and did not immediately report the injury to the employer.
8. On May 20, 2022, the claimant submitted a written letter to the store manager stating it was her final notice of employment as a full-time manager and that she was requesting to work part-time. The claimant told the store manager that she did not want to work full-time because she believed that working full-time was too much for her body as the job involved standing and bending for 7.5 hours per day, she was in pain from her hand injury, and she realized the job was more than she could bear.
9. The store manager told the claimant she would talk to the district manager about the claimant's resignation from her full-time position and her request to work part-time.
10. The store manager told the claimant that the district manager agreed to let the claimant work part-time hours. The store manager asked the claimant when she wanted to start her part-time hours. The claimant told the store manager she would work her already scheduled full-time hours for the next two weeks, which would be her notice period for the resignation from the department manager position.
11. During the week of May 22, 2022, through May 28, 2022, the claimant was scheduled to work 40 hours. The claimant worked 38.88 hours and earned \$699.90 in gross wages.
12. During the week of May 29, 2022, through June 4, 2022, the claimant was scheduled to work 30 hours with 8.0 hours as a holiday on May 30, 2022. The claimant worked 30.9 hours and received holiday pay for May 30, 2022. The claimant was paid \$556.20 in gross wages.

13. During the week of June 5, 2022, through June 11, 2022, the claimant was scheduled to work 20.5 hours. The claimant called out for one (1) day and worked 21.1 hours. The claimant was paid \$523.80 in gross wages.
14. During the week of June 12, 2022, through June 18, 2022, the claimant was only scheduled for Monday, June 13, 2022, from 9:30 a.m. to 2:30 p.m. The claimant was paid for .52 hours of work and 53.33 hours of accrued vacation time. The claimant's gross earnings for this week were \$969.30.
15. The claimant's hours were not reduced the weeks ending May 28, 2022, and June 4, 2022. The claimant's hours were reduced in the weeks ending June 11 and June 18, 2022, because the claimant had requested a reduction in her hours which the employer had granted.
16. The claimant's full-time hourly rate of pay of \$18.00 was not reduced to the part-time hourly rate of pay of \$15.00.
17. The claimant sought medical attention for her hand injury at the end of May and early June, 2022. On June 3, 2022, the claimant was diagnosed with tendonitis and was medically restricted from lifting more than five (5) pounds for two weeks. The claimant reported this to the district manager.
18. The claimant provided a medical provider's note to the employer on or about June, 2022. The claimant provided the note at that time because the district manager told the claimant that the employer needed to know the claimant's restrictions.
19. The district manager told the claimant that she did not need to put in any more hours and the employer did not intend to keep her because the district manager did not think the claimant intended to stay beyond the summer. The claimant told the district manager that she did not have another job and did not intend to leave her job.
20. The claimant reported to work on June 13, 2022, and was told by the district manager that she could not stay at work because human resources needed to approve her medical restrictions.
21. The claimant did not hear back from the employer after June 13, 2022.
22. The claimant's resignation from her full-time position was processed by the employer on June 13, 2023, the claimant's last day worked.
23. The employer did not process the claimant's May 20, 2022, resignation letter until June 13, 2023, because resignation letters are submitted to human resources by store managers on the date of termination.

Credibility Assessment:

There was a dispute between the parties as to whether the claimant was told she could work part-time after she told the employer in her May 20, 2022, letter that she no longer wanted to work full-time. The HR generalist presented hearsay testimony that the district manager told the claimant that the employer would accept the claimant's resignation from her full-time department manager position and that there were no part-time hours available for her, while the claimant offered direct testimony that the store manager told her she could work part-time. The claimant directly testified that she told the store manager she would work full-time for two weeks and then start part-time hours. The time punches submitted by the employer show that the claimant was scheduled for full-time hours (30 or more hours per week) for the weeks of May 22, 2022, and May 29, 2022, and that the week of June 5, 2022, she was scheduled for part-time hours, less than 30 hours per week. The district manager did not testify and the HR generalist testified that the store manager no longer works for the employer. In response to the question, "What happened on June 13, 2022, to cause this to be the claimant's last day," the claimant testified she was sent home pending human resources approval of her medical restrictions and never heard from the employer again, while the HR generalist testified that she did not know what caused June 13, 2022, to be the claimant's last day. Based on the totality of the testimony and the evidence presented, it is concluded that the direct testimony of the claimant is more credible than the hearsay testimony of the HR generalist.

As to Question #5 in the Board's remand order, the HR generalist testified that resignation letters are processed on the date of termination, indicating that the resignation letter was forwarded on or about June 13, 2022.

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 original legal conclusion that the claimant quit her employment, and that it was a disqualifying separation.

The review examiner initially concluded that the claimant quit her employment when she requested to change her schedule from full-time to part-time. However, after remand, the review examiner found that the employer agreed to reduce the claimant's schedule to part-time. *See Consolidated Finding # 10.* The claimant had requested the change to her schedule on May 20, 2022, due to medical reasons that prevented her from working full-time. *See Consolidated Finding # 8.* Further, the claimant began working the part-time schedule during the week ending June 11, 2022, before separating the following week, when the employer sent her home and failed to schedule her after June 13, 2022. *See Consolidated Findings ## 13–14 and 20–21.* Based on these findings, we

conclude that the claimant was discharged from her employment on June 13, 2022, when the employer stopped providing work.

Because the claimant was discharged from her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(2), 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

“[The] grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee's right to benefits, and the burdens of production and persuasion rest with the employer.” Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

As a threshold matter, the employer must demonstrate that the claimant engaged in the misconduct or policy violation for which she was discharged. In this case, on or about June 10, 2022, the district manager informed the claimant that the employer did not intend to keep the claimant, because the district manager did not believe that she intended to stay beyond the summer. *See Consolidated Finding # 19*. The claimant denied any intention to leave, but, nonetheless, the employer stopped scheduling her for work after June 13, 2022, without any clear explanation. *See Consolidated Findings ## 19–21*. In light of the above findings and the totality of the record before us, the employer has failed to show that the claimant's discharge was attributable to misconduct or a policy violation.

We, therefore, conclude as a matter of law that the employer has not met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest or that she knowingly violated a reasonable and uniformly enforced policy within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending June 18, 2022, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 26, 2024



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

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.

SVL/rh