

**Claimant, an employee of a temporary help firm, filed his claim for benefits after being notified his assignment was ending, and did not contact the employer for a new assignment. Because the employer advised the claimant in writing of his obligation to contact the employer following the end of any assignment, the claimant is deemed to have voluntarily left his employment pursuant to G.L. c. 151A, § 25(e). As he did not show that he left for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances, he is ineligible for benefits under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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Chairman  
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**Issue ID: 0078 7452 26**

### 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 affirm.

The claimant separated from his position with the employer on November 23, 2022. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on January 18, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on March 16, 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 testimonial evidence from the claimant. 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, a temporary help firm employee, failed to provide substantial and credible evidence to show that he resigned either for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons, 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. In December 2021, the claimant began working as a marketing operations analyst intern for Employer A, a software and IT consulting company.
2. The claimant was a full-time intern (40+ hours per week) who earned \$24 per hour.
3. The claimant's initial direct supervisor was the employer's marketing manager, and later the employer's marketing operations director.
4. In June 2022, Employer A notified the claimant that they could not continue paying him. Employer A was phasing out paid internships.
5. The claimant's supervisor referred the claimant to a staffing agency (the instant employer) and notified him that he could continue working for Employer A, through the instant employer.
6. The instant employer is a temporary help firm that hires its own employees and assigns them to clients' sites.
7. Employer A was a client of the instant employer. The instant employer hired employees and posted them for assignments with Employer A.
8. On or around June 1, 2022, the claimant met with the instant employer's branch manager.
9. During the meeting, the branch manager explained to the claimant that the instant employer would become the claimant's employer on the record.
10. The branch manager explained to the claimant how to complete an application through the instant employer and how to submit his I-9 and W-4.
11. After the meeting, the claimant completed a job application through the instant employer.
12. On June 7, 2022, the claimant signed an employment contract with the instant employer.
13. The employment contract stated in relevant part that the claimant was accepting a job offer with the instant employer.
14. The employment contract also stated that the claimant was expected to contact the instant employer within 2 days after the end of an assignment, and once every week if they were interested in a new placement.
15. The claimant officially began working for the instant employer on June 20, 2022.

16. The instant employer assigned the claimant to continue working for Employer A.
17. The instant employer paid the claimant \$24 per hour.
18. About two weeks before November 23, 2022, the claimant was informed by Employer A that his assignment was ending. Employer A explained that they had no funds to continue paying the claimant, and that because there had been a recent hire, the claimant's services were no longer needed.
19. The claimant's last day with Employer A was November 23, 2022.
20. The claimant was discharged from work by Employer A on November 23, 2022, due to lack of work, and lack of finances on the employer's end.
21. The claimant never contacted the instant employer to notify them that his assignment with Employer A had ended, or that he needed a new placement.
22. On November 25, 2022, the claimant filed for unemployment insurance (UI) benefits, effective November 13, 2022.
23. On December 6, 2022, the instant employer's branch manager texted the claimant offering him three positions: a full-time machine operator position in Location A, Massachusetts for \$20 per hour; a full-time position at a food production company in Location B, Massachusetts for \$19 per hour; and a full-time position at an electromechanics assembly company in Location C, Massachusetts for \$26 per hour.
24. The claimant did not respond to the instant employer's text message on December 6, 2022.
25. On January 10, 2023, the instant employer's branch manager texted the claimant offering him a full-time production associate position in Location B, Massachusetts for \$19 per hour. The claimant did not respond to the text message.
26. On Friday, January 27, 2023, the instant employer called the claimant to offer him a fulltime position at a company in the printing industry. The position would be based in Location D, Massachusetts, and would earn the claimant \$24-\$25 per hour. During the call, the claimant told the instant employer to message him the link to the job description so that he could look at it. The instant employer messaged the job link to the claimant.
27. By Monday, January 30, 2023, the claimant had not responded to the instant employer's offer.

28. On Monday, January 30, 2023, the instant employer messaged the claimant asking him if he was interested in the position discussed on Friday.
29. The claimant messaged the instant employer stating: “why is there an appeal protesting my unemployment claim?”
30. The claimant did not respond to the instant employer’s question about his interest in the job.
31. The claimant felt that all the jobs offered by the instant employer were not a good fit for him.
32. The claimant never talked to the instant employer about what kind of jobs he would be interested in.
33. The claimant quit his job with the instant employer on November 23, 2022, when he failed to contact the instant employer after the end of his assignment with Employer A.
34. There was work available for the claimant if the claimant had wanted to continue working for the instant employer.
35. For 2022, the claimant received two W-2s, one from Employer A, and one from the instant employer.

Credibility Assessment:

Both the claimant and the instant employer’s branch manager credibly testified in detail about the claimant’s relationship with the instant employer. Both testified that although the claimant began working for Employer A directly, in June 2022, the claimant began working for Employer A through the instant employer. The claimant stated that although he signed a contract with the instant employer on June 7, 2022, he did not understand that the instant employer became his employer, but instead thought that Employer A was still his employer. Where the contract explicitly stated that the claimant was accepting a job offer with the instant employer, and where the claimant submitted paperwork including a job application, I-9 forms, and W-4 forms, it is implausible that he did not understand that he had become an employee of the instant employer.

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. We further believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented. As discussed

more fully below, we believe the review examiner properly found that the claimant was not entitled to benefits.

As shown by the consolidated findings of fact, the claimant stopped working for the employer, a temporary help agency, when the employer's client ended the claimant's assignment. Consolidated Findings ## 5, 12, 16, 18, and 20. The unemployment statute imposes an affirmative obligation upon temporary help firm workers before they may qualify for benefits. Specifically, G.L. c. 151A, § 25(e), provides, 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.

The DUA has also promulgated regulations pertaining to this requirement. They are found at 430 CMR 4.04(8), and state, in relevant part, as follows:

(8) Temporary Help Firm Former Employees.

(b) Unless the claimant satisfies the provisions of 430 CMR 4.04(8)(c), the commissioner shall determine that the claimant has voluntarily 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 9.04(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.

(e) Any notice given by the temporary help firm to its temporary employees of the need to request a new assignment upon completion of their current assignment must be in writing and inform the employees of the method and manner for requesting a new assignment, such method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary employment firm for which he/she works, and that a failure to request a new assignment may affect their eligibility for unemployment compensation.

The Board has interpreted this contact provision of the statute 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 0016 0869 84 (Mar. 24, 2016); and Board of Review Decision 0002 2757 65 (Sept. 20, 2013).<sup>1</sup> However, this provision does not come into play unless the employer has provided the claimant with written instructions of his duty in that regard. As the employment contract informed the claimant that he was expected to contact the employer upon completion of an assignment, his eligibility for benefits turns on whether he contacted the employer for the new assignment prior to filing for unemployment benefits on May 20, 2019. *See* Consolidated Findings ## 12 and 14.

The claimant's assignment with Employer A ended on November 23, 2022. Consolidated Finding # 20. As the claimant did not contact the instant employer prior to filing a claim for benefits on November 25, 2023, the employer was not afforded the opportunity to offer him a new assignment. Consolidated Findings ## 21 and 22. In the absence of any evidence from the record indicating the claimant had good cause for failing to request another assignment prior to filing his claim, the provisions of 430 CMR 4.04(8)(b) instruct that we must conclude the claimant voluntarily quit his employment. *See* 430 CMR 4.04(8)(c)(3).

Pursuant to G.L. c. 151A, § 25(e)(1), a claimant who voluntarily leaves employment is eligible for benefits only if he can show that he left his 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 his employment. We further conclude that he did not show he 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 affirmed. The claimant is denied benefits for the week of November 20, 2022, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

*Chadene J. Stawicki*

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<sup>1</sup> Board of Review Decisions 0016 0869 84 and 0002 2757 85 are published on the Board's website, [www.mass.gov/dua/bor](http://www.mass.gov/dua/bor).

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 21, 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