

**Claimant quit from her part-time employment with the instant employer to accept new full-time, short-term employment. Because the new job was not permanent, the claimant is not eligible for benefits pursuant to the provision under G.L. c. 151A, § 25(e), which allows benefits if the employee leaves in good faith the accept new employment on a permanent full-time basis.**

**Board of Review  
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Member  
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**Issue ID: 0078 8491 75**

#### 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 quit her position with the employer on August 17, 2022. She filed a claim for unemployment benefits with the DUA, effective December 18, 2022, which was denied in a determination issued on January 28, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner reversed the agency's initial determination and awarded benefits in a decision rendered on April 13, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left her employment in good faith to accept an offer of full-time employment and, thus, was entitled to receive benefits under G.L. c. 151A, § 25(e)(1). 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 the claimant was entitled to receive benefits when she voluntarily quit her part-time job for full-time work, 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. Since approximately 2018, the claimant has worked seasonally as a part-time (10–15 hours per week) waitress for the instant employer, a restaurant.
2. The claimant's supervisors are the employer's owner and the employer's managers ("manager [A]" and "manager [B]").

3. The claimant typically begins working for the employer in approximately June and continues working until the employer's season ends in the fall.
4. The claimant's most recent period of employment with the instant employer began on June 3, 2022.
5. The claimant earned a base rate of \$6.15 per hour plus gratuities.
6. The claimant did not work anywhere else during her most recent period of employment with the instant employer.
7. The claimant's most recent period of employment was scheduled to end in fall 2022. The employer closed for the season on October 9, 2022.
8. On approximately July 19, 2022, the claimant was offered a full-time (30–40 hours per week) sales representative position with a new employer (the new employer) to begin on August 21, 2022.
9. The new employer offered the claimant an hourly rate of \$15.00. The claimant was told that her position with the new employer would end on December 5, 2022.
10. On or about July 19, 2022, the claimant accepted the position with the new employer.
11. The claimant decided to quit her employment with the instant employer to accept work with the new employer.
12. On or about July 19, 2022, the claimant notified manager [A] that she would be resigning from her position. The claimant gave August 17, 2022, as her last intended day of work.
13. Had the claimant not been offered a position with the new employer, she would have continued working for the instant employer.
14. The claimant quit her employment on August 17, 2022, in order to accept a job with the new employer.
15. The claimant filed a claim for unemployment benefits with an effective date of December 18, 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 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 is entitled to benefits.

Because the claimant resigned from her employment, her eligibility for benefits is properly analyzed pursuant to G.L. c. 151A, § 25(e), which provides, in pertinent 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. . . . However, 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.

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

The findings reflect the claimant quit her part-time employment on August 17, 2022, so that she could work for a new employer full-time. *See* Findings of Fact ## 11 and 14. The review examiner concluded that the claimant met her burden under the provision above, which states that she left her employment in good faith to accept new employment on a permanent full-time basis. We disagree.

Nothing in the findings demonstrates that this was permanent full-time employment. At the time that the claimant accepted the full-time position, she knew that the position was for a limited duration. *See* Findings of Fact ## 8 and 9. The fact that she accepted the offer of employment knowing that it was for a brief period of a little over three months indicates that it was not permanent employment. Since the full-time job was never intended to be permanent, the claimant has failed to meet the permanent criterion set forth in the above provision.


We, therefore, conclude as a matter of law that the claimant has failed to show that she left her employment in good faith to accept new employment on a permanent full-time basis within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending June 18, 2022, 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 - April 26, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



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.

DY/rh