

The claimant resigned after accepting an offer of employment from a new company. As the offer detailed information, such as the claimant's wages and start date, it was a *bona fide* offer of employment. The new employer later reduced the claimant's hours due to a lack of work. Held the claimant left in good faith to accept new permanent, full-time employment and became separated for good cause attributable to the new employing unit pursuant to G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0079 6626 72

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 resigned from her position with the employer on February 8, 2023. She filed a claim for unemployment benefits with the DUA, effective March 26, 2023, which was denied in a determination issued on May 2, 2023. 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 September 8, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant left her employment in good faith to accept new employment on a permanent full-time basis and the new employer reduced her hours. Thus, she concluded that the claimant was not 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 employer's appeal, we remanded the case to the review examiner to give the employer an opportunity to complete its testimony and provide other evidence. 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 left her employment in good faith to accept new employment on a permanent, full-time basis, is supported by substantial and credible evidence and is free from error of law, where the new employer offered the claimant the position before the claimant gave notice to the instant employer.

Findings of Fact

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

1. The employer is a home care agency providing services to individuals (clients) in their homes. The claimant worked full time for the employer as a certified nursing assistant from 2/8/2018 to 2/8/2023.
2. The claimant averaged 44 hours a week for the employer. Effective 1/8/23, the employer paid the claimant either \$16.25 or \$23.50 per hour and she received overtime for the hours she worked over 40.
3. The claimant worked Sunday through Tuesday for 12 hours a day for one client and 8 hours a day for another client on Wednesday.
4. The claimant is an elder and suffered from medical conditions, including high blood pressure and diabetes, that precluded her from working with special clients that were paid at the higher hourly rate of \$23.50.
5. The claimant's supervisor was the branch manager (manager).
6. The claimant also worked full time for another business (Employer B) as a bus driver, year-round, from September, 2000 to 3/26/2023. The claimant worked 35 to 40 hours a week and was paid \$30 per hour.
7. In December, 2022 or January, 2023, during the claimant's performance review, the claimant asked the manager for a raise, saying [Restaurant] paid more. The manager denied her request, saying she should go work for [Restaurant].
8. The claimant felt disrespected.
9. In January, 2023, the claimant filled out a job application with another business (Employer X) where the claimant had previously worked. Sometime before 1/27/2023, Employer X offered the claimant a new full time and permanent job to the claimant [sic] that paid \$18 an hour.
10. The claimant gave her notice to the manager on 1/27/2023, after the claimant's manager refused to match the \$18 per hour rate and the claimant gave her last day as 2/8/2023.
11. The claimant separated from the employer on 2/8/2023.
12. The claimant did not retire from her job with the employer.
13. The claimant started the new job with Employer X on or about 2/8/2023.
14. The claimant continued to work for Employer X, but three weeks after she started, her hours were reduced to part-time when the client she was assigned to work for was hospitalized and later died.

15. The claimant worked 35 hours for Employer X during her first week of employment.
16. The claimant worked 34 hours for Employer X during her second week of employment.
17. The claimant worked 31 or 30 hours a week for Employer X in the two subsequent weeks.
18. The claimant separated from Employer X on 3/8/2023.
19. On 3/26/2023, the claimant separated from Employer B for non-disqualifying reasons.
20. On 4/1/2023, the claimant filed a claim for unemployment benefits with an effective date of 3/26/2023.

Credibility Assessment:

The claimant testified in detail in the remand hearing about feeling disrespected at being told to work elsewhere if she was not happy with her pay, which prompted her to seek employment with a prior employer. The employer's employee experience manager was available at the remand hearing and testified from information chiefly contained in the claimant's employee file.

The claimant was unable to provide the date that she was offered employment from [Employer X], and after being asked three times, she eventually stated she had applied for the job in January, 2023. She testified as to her dates of employment but did not provide the documentation that was requested by the Board of Review.

In the hearing, the claimant testified that she gave a written two-week notice to the instant employer on 1/27/2023, and the employer testified there was a note in the file on 2/13/2023 from the claimant's manager that the claimant retired on 2/8/2023 but there was no resignation letter. The employer further testified that she was unaware that the claimant left to take another job, and had the claimant given them a resignation letter, it would have been in the file. When asked if she was aware of any reason the claimant had to decide to leave, the employer admitted she knew the claimant "wanted more money."

The claimant's consistent testimony was that she was offered a full-time job with [] (Employer X) and it was not until after she started the job that her hours were reduced, when her assigned client went into the hospital and later died, although the claimant could not give exact dates. She testified that she started on 2/27/2023 but that does not make sense since she also testified that she had worked four weeks before separating from [Employer X] on 3/8/23. It is logical then that she started the new job on or about the date she separated from the instant employer.

In summary, because the employer's testimony relied entirely on secondary sources and although the claimant did not provide the requested documentation from [Employer X], the testimony of the claimant was credible and consistent, showing she did not retire, but left to take another full-time, permanent job that paid a higher hourly rate. The employer's testimony was not based on her own first-hand knowledge, but rather on what another or others had placed in the file. For that reason, the employer's testimony that the claimant had retired is not considered reliable. The claimant provided details of her own conversations with the office manager and what she wrote in the letter. It is logical that she did not retire as she continued to work for the bus company after her separation with the instant employer. The claimant's lack of specificity as to dates of her employment is understandable as she was working three jobs within this time period and could have been confused.

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.

When a claimant voluntarily leaves her employment, we consider 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

After remand, the review examiner found that the claimant resigned her position with the instant employer to accept a new offer of work. Consolidated Findings ## 9–10 and 13. Therefore, there is no basis to conclude that the claimant left her employment for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). Rather, based on the claimant's assertions, we consider her eligibility for benefits based on the third paragraph under G.L. c. 151A, § 25(e), which states, in relevant 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.

By its express terms, this section of law places the burden of proof upon the claimant.

The first question is whether the claimant showed that, at the time that she gave notice to the employer, she had a *bona fide* offer of new permanent, full-time employment, as opposed to the mere prospect of new employment. To meet the burden of proof, we have required claimants to show that the new employer conveyed enough detailed information about the new employment such as to create a good faith belief that it intended to hire the claimant for a specific job.

The review examiner found that prior to giving notice to the instant employer on January 27, 2023, the claimant had received an offer of permanent, full-time employment that paid \$18.00 per hour. Consolidated Finding # 9. Further, because the claimant began her new employment on or about the day that her notice period with the instant employer concluded on February 8, 2023, we can reasonably infer that, at the time she gave notice, the claimant had already received a start date for her new employment. *See* Consolidated Findings ## 10–11 and 13. This type of detailed information is consistent with job offers made to claimants in other appeals before the Board, where we concluded that such particulars about the new position could reasonably create a good faith belief that the new employer intended to hire them. *See* Board of Review Decision 0021 9411 85 (Dec. 19, 2017) (a *bona fide* job offer had been made to the claimant, as she had been told the individual partners that she would be working for, the number of hours she would work, and the salary that she would be paid). Absent evidence that there were contingencies attached to the offer that the claimant was unable to satisfy, and we see none, we are satisfied that the claimant resigned her position with the instant employer in good faith to accept new employment on a permanent, full-time basis.

Finally, we consider whether the claimant separated from her new employer for good cause attributable to the new employing unit. Although the relevant part of G.L. c. 151A, § 25(e), specifically references separation “for good cause attributable to the new employing unit,” we note that the DUA Adjudication Handbook enunciates a more expansive definition for how to apply this provision of the statute:

Under G.L. c. 151A, § 25(e), a claimant is not disqualified if the claimant establishes 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 *under non-disqualifying circumstances*. *See* Division of Unemployment Assistance Adjudication Handbook, Ch. 7, § 9 (emphasis added). The Board has deferred to the DUA’s interpretation of this provision. *See* Board of Review Decision 0067 3510 13 (Dec. 22, 2023). *See also* Connolly v. Dir. of Division of Unemployment Assistance, 460 Mass. 24 (2011) (the purpose of the unemployment statute is to provide temporary relief to persons who are out of work and unable to secure work through no fault of their own) (further citations omitted).

In the present case, three weeks after the claimant began her new job, her hours were reduced to part-time when the client that she was assigned to work with was hospitalized and later passed away. Consolidated Finding # 14. Thus, the new employer did not reduce the claimant’s hours based on actions taken or decisions made by the claimant. It simply had no work to offer to her. In effect, she was laid off through no fault of her own, and the separation does not disqualify her from receiving benefits. *See* Consolidated Finding # 19.

We, therefore, conclude as a matter of law that the claimant has satisfied her burden to show that she left her employment in good faith to accept new employment on a permanent, full-time basis,

and that the new employer reduced her hours for good cause attributable to the employing unit pursuant to G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning February 5, 2023, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 31, 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