

The claimant resigned after he learned of the possibility of a job with a new company from friends. He believed he would get the position based on a personal assumption that only he had the skill set necessary to perform the duties of the position. However, he quit before the job was even posted. Because he resigned before he had a job offer, held he did not resign in good faith to accept new employment on a permanent full-time basis within the meaning of G.L. c. 151A, § 25(e), and he is ineligible for benefits.

Board of Review
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Issue ID: 0081 1722 46

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 resigned from his position with the employer on July 25, 2023. He filed a claim for unemployment benefits with the DUA, effective September 24, 2023, which was denied in a determination issued on October 14, 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 December 6, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment to accept new full-time permanent work for a new employer and, thus, was eligible for benefits under G.L. c. 151A, § 25(e). 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 voluntarily resigned from his employment in good faith to accept new employment on a permanent and full-time basis and then became separated from the new employer due to lack of 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. The claimant was employed as a full-time technician by the employer from May 22, 2023, until July 25, 2023, when the claimant quit.
2. The claimant is a member of a union hall.

3. The claimant was notified that another employer had an opening for a permanent full-time telecommunication technician.
4. The claimant was aware that he was the only member of the union eligible to take the position with the new employer.
5. Through the union hall, the claimant accepted the offer for full-time, permanent employment with a new employer.
6. The claimant began new employment on July 31, 2023.
7. The claimant quit to accept new employment with a new employer.
8. On September 14, 2023, the claimant separated from the new employer due to lack of work.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We accept Finding of Fact # 5 only in so far as it reflects that the claimant accepted full-time employment with the new employer. As further discussed below, it does not reflect the claimant's status with the new employer as of the date of his resignation. We reject Finding of Fact # 7 as it is unsupported by the evidence. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, for the reasons set forth below, we reject the review examiner's legal conclusion that the claimant is entitled to benefits.

When a claimant voluntarily leaves his employment, we consider his eligibility for benefits pursuant to the following provisions under G.L. c. 151A, § 25(e), which provide, 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

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 to show that he left his employment in good faith to accept new employment.

We must first determine whether the findings show that at the time of resignation, the claimant 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. *See* Board of Review Decision 0081 5524 37 (April 26, 2024).

We disagree with the review examiner's conclusion that the claimant left the instant employer because he had an offer of new employment. During the initial hearing, the claimant testified that he did not have a job offer at the time of his resignation but had knowledge that the new employer would be posting a position with the union hall soon.¹ He further testified that he became aware the new employer was looking for a full-time permanent telecommunications technician from friends who worked there. *See* Finding of Fact # 3.

A job posting that would soon become available is not a job offer. It is merely the possibility of new employment. Other than his friends, the claimant did not show that he had spoken to anyone from the new employer with hiring authority prior to his resignation from the instant employer.

We further note that Finding of Fact # 5 indicates that one cannot accept the position of telecommunications technician until it was posted with the union hall. Based upon the claimant's testimony, the position was posted with the union hall *after* he had resigned from his position with the instant employer. While the claimant may have believed he was guaranteed the position since he was the only person within the union hall with the specific skill set to accept the position, we see no evidence that supports that assumption. *See* Finding of Fact # 4. Because the position of telecommunications technician was not available to the claimant until after he resigned, he failed to meet his burden to show that he had a *bona fide* offer of permanent, full-time employment from the new employer at the time he resigned from the instant employer.

We, therefore, conclude as a matter of law that the claimant has failed to satisfy his burden to show that he left his 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 September 30, 2023, 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.

¹ During the hearing, the claimant explained the circumstances regarding how he obtained his new full-time employment through his union hall *after* he gave his resignation to the instant employer. While not explicitly incorporated into the review examiner's findings, this testimony and the portion of his testimony referenced below are part of the unchallenged evidence introduced at the hearing, and they are thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 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.

DY/rh