

**Claimant, who quit her job to take a full-time assignment with a temporary employment agency, is not disqualified under G.L. c. 151A, § 25(e)(1), because the work with the temporary agency is “permanent,” as contemplated in G.L. c. 151A, § 25(e), and the agency subsequently determined that she separated from that new job under non-disqualifying circumstances.**

**Board of Review  
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**Issue ID: 0083 5598 90**

### 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 resigned from her position with the employer on June 13, 2024. She filed a claim for unemployment benefits with the DUA, effective August 11, 2024, which was denied in a determination issued on September 19, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on October 22, 2024. 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 is subject to disqualification pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant quit her position with the instant employer to take a full-time job with a temporary employment agency.

### Findings of Fact

The review examiner’s findings of fact are set forth below in their entirety:

1. The claimant worked full-time as a medical secretary/receptionist for the instant employer, an acupuncture office, from 10/19/2021 through 6/13/2024.

2. The claimant typically worked Monday through Friday, from 8:30 a.m. to 3:00 p.m., with some Wednesdays off, and Saturday, from 8:30 a.m. to 2:00 p.m. She earned \$18.00 per hour.
3. The instant employer did not offer the claimant benefits.
4. Around 5/25/2024, the claimant received a job offer from an unrelated employer (the Unrelated Employer), a temporary agency. The assignment with the Unrelated Employer was a temporary to potentially permanent position as a patient access representative at its client (the Client), a hospital.
5. The Unrelated Employer offered the claimant \$22.00 per hour with no benefits.
6. If converted to a permanent position, the Client would offer the claimant benefits such as 401(k) and paid time off.
7. The claimant accepted the temporary to potential permanent [sic] with the Unrelated Employer. The Unrelated Employer gave the claimant a start date of 6/17/2024 with the Client.
8. On 5/25/2024, the claimant gave the instant employer's owner a resignation letter, quitting effective 6/13/2024.
9. On 6/13/2024, the claimant quit her employment to work a temporary to potentially permanent position at the Client through the Unrelated 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 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 disagree with the review examiner's legal conclusion that the claimant is subject to disqualification.

The review examiner found, and concluded, that the claimant quit her position with this employer to take a full-time<sup>1</sup> assignment with a temporary employment agency. G.L. c. 151A, § 25(e), provides, in pertinent 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

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<sup>1</sup> The full-time nature of the temporary to permanent work was not noted in the review examiner's findings. However, during the hearing, the claimant testified that the work was full-time. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

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.

As noted, the claimant quit her job to take a different full-time job. As to whether the new work was permanent, the review examiner concluded, in pertinent part, the following:

In this case, the claimant left her position with the employer to pursue a temporary position with the potential of permanent employer [sic] because the potential permanent employment offered benefits. However, the claimant admitted she was not offered permanent employment. . . . Accordingly, the claimant is subject to disqualification under Section 25(e)(1) of the Law and is denied benefits.

The conclusion infers that, because the claimant accepted a position with a temporary employment agency, the job was not permanent.

However, the review examiner's conclusion amounts to a legal error, because it is inconsistent with long-standing Board of Review precedent governing temporary placement agencies.<sup>2</sup> For example, in Board of Review Decision 0010 6162 10 (Sept. 29, 2014) and Board of Review Decision BR-108951 (July 29, 2009), the Board held that employment with a temporary staffing agency or a "temp-to-perm" position may constitute permanent employment where it has all of the characteristics of a permanent job, notwithstanding its label. That is, the employer is expected to continue to offer work, even if it is in the form of a succession of assignments. In the present appeal, there is nothing in the record to show that the claimant's employment with the placement agency was governed by or limited to the duration of the initial assignment.

Although the provision under G.L. c. 151A, § 25(e), at issue specifically references separation "for good cause attributable to the new employing unit," the Board has deferred to the DUA's expansive definition of this provision. The DUA Adjudication Handbook states:

Under § 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). Here, the DUA's electronic record-keeping system, UI Online, shows that the DUA adjudicated the claimant's subsequent separation from the new employer to be non-disqualifying.

We, therefore, conclude as a matter of law that the claimant left her employment in good faith to accept new employment on a permanent full-time basis, and that she became separated from such new employment for good cause attributable to the new employing unit, as meant under G.L. c. 151A, § 25(e).

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<sup>2</sup> "Application of law to fact has long been a matter entrusted to the informed judgment of the board of review." Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463-464 (1979) ("[I]f it were left to final decision by the several review examiners, consistent application of the statute to persons similarly situated would be impaired.").

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning June 9, 2024, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 30, 2025**



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](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.

JMO/rh