The employer did not have additional work for the claimant when her contract position with a school district ended. She separated due to a lack of work and not for a knowing violation of a reasonable and uniformly enforced policy or deliberate misconduct in wilful disregard of the employer's interest, as meant under G.L. c. 151A, § 25(e)(2).

Board of Review
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Issue ID: 334-FHJH-7MNV

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 separated from her position with the employer on February 27, 2025. She filed a claim for unemployment benefits with the DUA, effective February 23, 2025, which was denied in a determination issued on April 17, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on May 28, 2025. 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). 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 claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant quit her employment to look for other work even though she could have continued working for the employer, is supported by substantial and credible evidence and is free from error of law, where the employer did not have work for the claimant after February 27, 2025.

Findings of Fact

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

1. The claimant worked as a Speech and Language Pathologist, a temporary position for the employer, a behavioral service agency, from 12/6/24 until she separated from the employer on 2/28/25.

2. The claimant worked part-time, 25-27 hours a week, earning $75.00 an hour. She was hired as a temporary worker. With the offer of employment there was

no discussion on how long the contract she was hired for would last. The employer never guaranteed that the claimant would work to the end of the school year.

3. The claimant had been working full-time for a local school system with another employer before taking this part-time position with the instant employer. She was unhappy with the pay and the hours as she was asked to work full-time. The claimant wanted to work part-time because she was one of the caretakers for her elderly mother who is 88 years old and lives in a residential facility and to care for her two grandchildren who live close by and needed help with their care.

4. The claimant had left work to search for other work on her own.

5. Just prior to 2/11/25, the Doctor/Owner had been notified by the Director of Special Education in the school system where the claimant was working that her contract would be ending in a couple of weeks, because they had found a permanent full-time employee.

6. On 2/11/25, the Doctor/Owner informed the claimant in person that her contract would be ending in two weeks and that he would be looking for another contract for her. The claimant told the employer she did not know if she wanted him to look for another contract and would need to think about it.

7. The claimant continued to work until the end of February.

8. On 2/28/25, the employer sent her an email asking her if she would like him to look for another contract. The claimant responded to the employer indicating she would prefer to take a break.

9. On 3/5/25, the employer received a request from someone looking for a pathologist, so he sent the claimant a text message asking her if she wanted him to pursue this contract opportunity for her. The claimant indicated she did not want him to pursue the pathology opportunity for her right now, as she planned on finding work on her own. The employer did not pursue this position for the claimant at her request.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 1 that states that the claimant separated from the employer on February 28, 2025. The testimony and Exhibit # 7, which includes an email from the employer to the claimant dated February 27, 2025, establish that the claimant's last day was February 27th. We further reject the portion of Finding of Fact # 8 that states that the claimant received an email

from the employer on February 28, 2025, asking her if she would like the employer to find more work for the claimant.[1] Finally, we reject the portion of Finding of Fact # 4 that states that the claimant "left" her employment, as this characterization of the claimant's separation is contradicted by Findings of Fact ## 6 and 8. In adopting the remaining findings, we deem 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 not eligible for benefits.

G.L. c. 151A, § 25(e)(1), 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 . . . .

The review examiner concluded that the claimant left her employment, reasoning that, although she could have continued working for the employer, the claimant chose to leave and search for other work on her own. As such, the review examiner analyzed the claimant's separation under G.L. c. 151A, § 25(e)(1), concluding that the claimant did not establish good cause attributable to the employer or urgent, compelling, and necessitous reasons to leave her employment. We disagree with the review examiner's conclusions and reasoning.

Findings of Fact ## 5–8 and the totality of the evidence in the record establish that the contract work that the employer provided to the claimant was scheduled to end on February 27, 2025, because the school district to which the claimant was assigned had hired a permanent employee and no longer required the claimant's services.[2] These findings further show that the claimant completed her assignment, and, as of her last day, the employer had not found new work for her.

Although the claimant informed the employer on February 11, 2025, that she was not sure if she wanted the employer to look for other work for her, the employer testified that, on February 27th, the owner asked the claimant if she wanted him to "continue" looking for work for her. Based on this testimony, it is clear that, despite the claimant's ambivalence on whether she wanted the employer to look for other work for her, the employer was in fact looking for work for the claimant between February 11, 2025, and February 27, 2025, and it simply did not have other work available as of the end of her assignment with the school district.

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[1] The email at issue from the employer to the claimant that is in the record as Exh. 7 is dated February 27, 2025, and it references a conversation between the claimant and the employer earlier that day. The employer states in the February 27th email that the claimant mentioned that she would prefer to take a break instead of having the employer reach out with another contract, and that, as a result, February 27th would be the claimant's last day. 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).

[2] We note that, although the claimant was providing temporary services to another organization through the employer, there is no indication in the record that the employer is a temporary help firm, as defined in 430 CMR 4.04(8)(a). Consequently, neither 430 CMR 4.04(8), nor the temporary help firm provision under G.L. c. 151A, § 25(e), apply in this case.

Based on the above findings, we conclude that the employer terminated the claimant's employment on February 27, 2025. Because the claimant was terminated from her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(2), 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest . . . .

Under the foregoing provision, it is the employer's burden to show that the claimant was discharged for a knowing violation of a reasonable and uniformly enforced rule or policy or for deliberate misconduct in wilful disregard of the employer's interest. *See* Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

To meet its burden, the employer must show that the claimant violated a rule or policy or engaged in some misconduct. The findings show that the claimant continued to perform her duties without incident through the day she was discharged. Finding of Fact # 7. There is no indication that the claimant acted inconsistently with an employer policy, rule, or expectation. Instead, the employer ended her employment because her assignment with the school district ended on February 27, 2025, and the employer was unable to find additional work for her at that time.

We, therefore, conclude as a matter of law that the claimant was laid off from her employment due to a lack of work and not for a knowing violation of a reasonable and uniformly enforced policy or deliberate misconduct in wilful disregard of the employer's interest within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning February 23, 2025, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 25, 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

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