



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW DECISION

BR-109787 (Aug. 25, 2011) -- A majority of the Board denied benefits under G.L. c. 151A, sec. 25(e)(1), to a claimant who voluntarily tendered her resignation, then tried unsuccessfully to rescind it.

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 affirm.

The claimant separated from her position with the employer on July 24, 2007. She filed a claim for unemployment benefits with the DUA, which was originally denied, but in a redetermination issued on October 24, 2007, the DUA approved benefits. The employer appealed the redetermination to the DUA hearings department. A hearing before a different review examiner resulted in a decision to affirm the award of benefits, which the employer appealed to the Board of Review. After reviewing the entire record, the Board remanded the case to a different review examiner to conduct a hearing *de novo*, because a portion of the tape-recorded hearing transcript was defective.

As a result of the Board's *de novo* order, a new hearing on the merits was held before this Review Examiner. Only the employer attended. In a decision rendered on March 31, 2009, the review examiner overturned the agency's redetermination and denied benefits. 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 and without 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 remanded the case to the review examiner to afford the claimant an opportunity to present evidence.

Both parties attended the remand hearing sessions held on January 7, 2010, March 11, 2010, June 21, 2010, and on September 15, 2010, when an issue arose over the claimant's ability to participate in the hearing session and the case was returned to the Board. We remanded the appeal back to the review examiner in order to complete the claimant's testimony. When the claimant failed to attend a subsequent remand hearing, the Board issued a Notice to Show Cause for Failure to Prosecute to the claimant. In response, the claimant filed a motion showing cause for her failure to attend the most recent hearing and asking the Board to issue a decision on the existing record. The Board allowed the claimant's motion, but remanded the case once more to the review examiner to make consolidated findings of fact based upon the evidence presented at all of the four remand hearings. Thereafter, the review examiner issued his consolidated findings of fact.

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, the claimant's appeal, and the consolidated findings of fact.

The issues on appeal are: whether the claimant, who submitted a letter of resignation, but then attempted to retract it, and ultimately was asked to leave her employment 30 days from the date of the letter, should be deemed to have quit her job or to have been discharged; and, if the former, whether the claimant had good cause for leaving her employment.

Findings of Fact

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

1. The claimant was employed as a staff attorney (civil legal services program) from 2/15/06 until 7/24/07, when she left her job.
2. The claimant submitted a resignation on 6/25/07 citing dissatisfaction with not getting the level of experience implied at time of hire and having to again work under someone with "significantly less experience" than her.
3. The employer had recently appointed a temporary manager while the existing site manager was out on a short term leave of absence. This same individual had also filled in earlier in the year for a short time.

4. The claimant had expressed dissatisfaction with not having been given this appointment in recent weeks and had indicated she would quit then (to the acting manager), but she did not make any formal complaint about it to the executive director or the site manager.
5. There was also a recent conflict about the claimant's actions in a case in which she had taken custody of a dog for a client. This had been considered inappropriate and she was told to return the dog. The claimant had not been given any formal warning at that point, however, and she was not told her job was in jeopardy.
6. The claimant's work experience was also not greater than the employee who was appointed to the temporary manager position and the employer did not know what specific experience the claimant had not yet received.
7. The resignation letter indicated that the claimant would be willing to honor her original, informal two year commitment to the program (which would be through February of 2008) if the employer so desired, but she also indicated she hoped to be allowed to leave earlier.
8. The executive director was on vacation when the resignation was sent. The site manager was still on leave (personal injury). When the executive director returned (approximately 7/6/07), he dealt with the letter.
9. The executive director (located at a different work site) sent the claimant E-mails asking to meet about the resignation issues, and other potential issues regarding cases the claimant had concerns about (in a letter sent separately to the absent site manager). He also wanted to clarify the length of the claimant's intended notice period, stating that 2 weeks-30 days was standard for lawyers. He also felt the resignation indicated the claimant wanted to leave as soon as possible. There was no formal contract of hire and no agreement requiring the claimant to complete a two year commitment.
10. The claimant, however, did not work after 7/6/07 due to sick calls and a disputed leave period she claimed had been approved earlier. They then communicated by E-mail during the next month, although the executive director continued to urge the claimant to meet him in person for their discussions.
11. The claimant continued to fail to do so, however, for various reasons. On 7/20/07, after several confusing E-mails, the claimant stated among other things that her plan was to leave on 1/2/08 (which she thought was "earlier" than her two year commitment).

12. The executive director found this difficult to understand since the claimant had stated several concerns about potential malpractice, and the potential damage to her license and reputation in earlier statements and communications.
13. The employer had investigated the claimant's stated concerns after receiving them but could not establish any basis or foundation for them. The claimant continued to not report for a meeting despite continuing attempts to set one up.
14. The executive director finally suggested the end of the notice period to be 7/30/07 (in an E-mail sent on 7/24/07) since the claimant had not returned since 7/6/07 and did not communicate more information regarding her expectations for a lengthier period.
15. The claimant continued to respond that she would be in the office to discuss this (7/30/07 was last cited on 7/29/07) but she did not report.
16. The executive director offered another meeting for 8/2/07 in an E-mail sent 8/1/07. That also did not take place. The separation then became officially final effective 7/24/07, 30 days from the date of the resignation letter.
17. During this process, the claimant indicated she considered herself to have been discharged. The employer denied this. The claimant was never informed of a discharge.
18. When the claimant sent her 6/25/07 letter to the employer, she wanted to bring [sic] her concerns about the acting manager's abilities, difficulties with the legal interns, and her concerns that she could be held personally liable for malpractice for potential errors made by others, although the employer did carry malpractice insurance for the program.
19. She stated she would stay to complete a lengthy 6-8 month notice but hoped to be allowed to leave earlier. The full notice would have been to 1/28/08.
20. On the morning of 6/25/07, prior to submitting her resignation letter, the claimant, who was very frustrated at the time, related to the acting manager her dissatisfaction with the temporary appointment, was going to quit, did not need this, was considering taking the summer off and working for someone else in the fall, and would quit that day if the employer agreed to it.
21. The employer eventually decided to accept the resignation, but initially tried to set up meetings to discuss the claimant's issues and resolve what the resignation time period would be.

22. After the 6/25/07 resignation letter, the claimant did indicate she would continue working for the employer as long as her concerns regarding potential malpractice issues were resolved, or she'd stay for up to the original notice period. However, the attempts to get together to discuss this failed. The employer finally set the resignation date.
23. The employer raised concerns about the claimant caring for and bringing a client's dog to the workplace on or about 6/28/07 or 6/29/07.
24. When the claimant left a voice mail message on 7/19/07 that she would return to work on 7/20/07 after her "leave" period ended, she was notified not to go to her own office, but to come to the employer's [location], MA offices to discuss her situation with the employer first.
25. One of the interns received advice from the acting manager regarding the daughter of a client being eligible to obtain a temporary restraining order, on or about 6/26/07. This was later proven to be incorrect, but the information provided to the acting manager at the time was also confusing and possibly inaccurate.
26. The claimant subsequently (8/29/07) submitted a complaint to the Board of Bar Overseers [sic] regarding several issues the claimant felt were being dealt with incorrectly. The complaint was addressed and some of the issues were found to be a problem which needed correction. Those were dealt with by the employer subsequently, as directed.

Ruling of the Board

The Board adopts the review examiner's consolidated findings of fact, with minor exceptions noted in the margin that are not material to our decision¹. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law.

In his decision, the review examiner concluded that the claimant voluntarily resigned from her employment without good cause attributable to the employer. 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 for . . . the period of unemployment next ensuing . . . after the

¹ Consolidated finding #5 refers to a "recent conflict" between the parties over the claimant taking custody of a client's dog. The date of this conflict is clarified in consolidated finding #23 as occurring on or about June 28-29, 2007. Consolidated finding #26 incorrectly identifies the Board of Bar Overseers as the entity to which the claimant submitted her August 29, 2007 complaint. R. Exhibit #6 shows that the complaint was sent to the Legal Services Corporation Office of Inspector General.

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

First, we consider whether the claimant voluntarily resigned. The review examiner found that the claimant submitted a letter of resignation to the employer on June 25, 2007, and that at some point, the employer accepted her resignation. These findings are supported by the resignation letter itself², which states “I must tender my resignation” and the claimant’s statements to her acting manager on June 25, 2007. As set forth in consolidated finding #20, on that morning, the claimant told her acting manager that she intended to resign, that she would do so that day if the employer agreed, and that she considered taking the summer off and working for someone else in the fall. We believe that this constitutes substantial evidence that the claimant voluntarily terminated her employment on June 25, 2007.

It makes no difference that the claimant subsequently communicated to the employer that she did not want to leave. In Massachusetts, the Supreme Judicial Court has held that “a change of heart is not enough” to convert a voluntary resignation into a discharge. LeBeau v. Comm’r. of the Department of Employment and Training, 422 Mass. 533, 536 (1996) (collecting cases from other jurisdictions and adopting the majority rule that an offer to resign, once made and accepted, cannot be retracted for the purposes of unemployment insurance eligibility). *See also* Abramowitz v. Dir. of the Division of Employment Security, 390 Mass. 168, 173 (1983)(substantial evidence supported the hearing officer’s conclusion that the claimant had voluntarily resigned, causing his own unemployment, and subsequent letters from his attorney to say the claimant had not intended to resign were of no effect).

Our ruling is in harmony with the purpose of the unemployment statute, which is to deny benefits to claimants who create their own unemployment. It was the claimant who “set in motion the chain of events” that led to her being out of work with her resignation letter to the employer. LeBeau, 422 Mass. at 537.

We do not believe it makes any difference that the claimant’s June 25, 2007 letter left her date of departure open to negotiation. The claimant had not set a firm departure date; her employer indicated that the standard period of notice in her occupation was two weeks to 30 days, and ultimately her employer settled on the 30-day period. However, the claimant’s manifestation both orally and in writing of a firm intention to leave her employment was an unequivocal notice of her voluntary departure quite independent of precisely when it would take place.

Next, we consider whether the claimant’s resignation was for good cause attributable to the employer. In her June 25, 2007 letter, the claimant set forth two reasons for her resignation: (1) she was not getting the experience implied at the time of hire; and (2) she was being managed by someone with significantly less experience than the claimant had. Neither one of these reasons were shown to have any basis in fact but in any event do not constitute good cause for leaving

² The claimant’s June 25, 2007, letter is Exhibit #10.

employment. Sohler v. Director, Division of Employment Security, 377 Mass. 735 (1979) (claimant's dissatisfaction with her working conditions does not constitute good cause for leaving). The claimant never explained, either in the record or to the employer, exactly what type of experience it was that she was promised and not given, and the review examiner found that the claimant did not have more experience than the temporary manager. The other evidence which the claimant offered into evidence, including interns receiving incorrect legal advice to give to clients, disparate treatment when she was reprimanded for bringing a dog into the office, and retaliation for complaining to the Legal Services Corporation Office of Inspector General, all refer to instances that took place *after* June 25, 2007. Since they took place after the claimant's announced resignation, they were not relevant to the claimant's decision to resign. Therefore, the claimant has failed to establish good cause attributable to the employer for her separation.

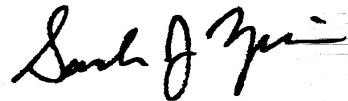
We, therefore, conclude as a matter of law that the claimant voluntarily terminated her own employment without good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending July 28, 2007 and for subsequent weeks, until such time as she has had eight weeks of work and in each of those weeks has earned an amount equivalent to or in excess of her weekly benefit amount.



BOSTON, MASSACHUSETTS
DATE OF MAILING - August 25, 2011

John A. King, Esq.
Chairman



Sandor J. Zapolin
Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT – September 26, 2011