



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW DECISION

BR-120231 (Jan. 20, 2012) – Temporary employee who failed to contact his temporary help firm for reassignment was not disqualified under G.L. c. 151A, § 25(e), because the employer never provided the claimant with written notice that failure to do so may affect his eligibility for unemployment benefits, as required under 430 CMR 4.04(8)(e).

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 his position with the employer on May 9, 2011. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 19, 2011. 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 August 16, 2011. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had left his job voluntarily without good cause attributable to the employer, 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 on appeal is whether the claimant, who worked for a temporary placement firm for fourteen months before being laid off, but failed to request a new assignment before filing for benefits, should be deemed to have voluntarily quit when he had not received the statutorily required notice upon hiring that his failure to request a new assignment could affect his unemployment insurance eligibility.

Findings of Fact

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

1. The claimant worked as a Board Souder [sic] for the employer, a temporary employment agency, from 3/23/10 until he separated from the employer on 5/9/11.
2. The claimant was hired to work full time earning \$15.00 an hour.
3. The claimant had been told by the client company that the available jobs were slowing down and that all temp employees were going to be laid off.
4. The claimant worked until 5/9/11 his last day of work as a result of the lay off.
5. When the claimant was hired by the temp agency he was given and signed an acknowledgement that he needed to contact the temp agency once an assignment has ended for another assignment or he would be considered to have voluntarily left his position.
6. The employer expects employees to contact them for a new assignment once an assignment is ended. The claimant was made aware of this in written communication which he signed on 3/21/10.
7. The claimant did not contact the employer for reassignment after being let go on 5/9/11.
8. The claimant did not contact the employer for more work because he wanted to look for full time permanent work.
9. He did not contact the employer again after being laid off.
10. The claimant received unemployment benefits in the amount of \$300 per week for each of the weeks-ending 6/11/11 through 6/18/11.
11. On 7/19/11, DUA issued the claimant a redetermination denying him benefits under Section 25(e)(1) of the Law. He was found to be overpaid benefits in the amount of \$300 for the weeks-ending 6/11/11 through 6/18/11 in accordance with Section 71 of the Law. The CAU attributed this overpayment to error with no fraudulent intent.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

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 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, . . .

Also applicable to this case is G.L. c. 151A, § 25(e), which provides, in pertinent part, as follows:

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

The content of the required notice is further explained, as follows, in 430 CMR 4.04(8)(3)(d):

Any notice given by the temporary help firm to its temporary employees of the need to request a new assignment upon completion of their current assignment must be in writing and inform the employees of the method and manner for requesting a new assignment, such method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary employment firm for which he/she works, and that a failure to request a new assignment may affect their eligibility for unemployment compensation.

The last sentence of the above-cited regulation compels reversal of the decision to deny benefits. The employer's notice form, in the record as Exhibit 11, does not contain the required warning about the effect that failure to request a new assignment may have upon eligibility for unemployment benefits.

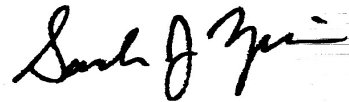
For the foregoing reasons, we conclude as a matter of law that the claimant's separation from employment was not disqualifying under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending June 4, 2011 and for subsequent weeks if otherwise eligible.

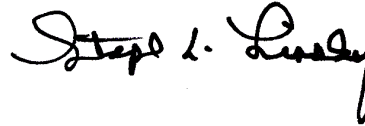


John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - January 20, 2012



Sandor J. Zapolin
Member



Stephen M. Linsky, Esq.
Member

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 – February 21, 2012