

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Quatanna Hardy,
Petitioner

v.

Docket No. DET-22-0410

Department of Unemployment Assistance,
Respondent

Appearance for Petitioner:

Quatanna Hardy



Appearance for Respondent:

John P. Cronin, Esq.
Assistant Chief Counsel
Department of Unemployment Assistance
19 Staniford Street
Boston, MA 02114

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Disqualification by Department of Unemployment Assistance (DUA) of former DUA employee to receive unemployment benefits because she voluntarily left her job is reversed because she had good cause to leave attributable to DUA.

DECISION

The petitioner, Quatanna Hardy, appeals the decision of DUA disqualifying her for unemployment benefits.

I held a hearing on December 13, 2022 by Webex, which I recorded. Mrs. Hardy represented herself, testified, and called no other witness. DUA called as a witness Yvonne Fernandez, the director of its call center. (References in this decision to testimony are to Mrs. Hardy's testimony.) I admitted 11 exhibits.

At the close of testimony, I did something that I have rarely done: After I pointed out that Mrs. Hardy had tried to avoid having a call center job and ended up with a call center job, I expressed skepticism that the respondent had supported its position. I asked DUA's lawyer if he wanted me to suspend the hearing for 30 minutes while he conferred with DUA about the possibility of not proceeding further. I emphasized that I was neither ruling from the bench nor trying to force DUA to settle or accept Mrs. Hardy's application for unemployment benefits. DUA's lawyer said that 30 minutes would not suffice. I ended the hearing with the following arrangement in place: DUA would either email me if it changed its position on denying benefits to Mrs. Hardy or it would submit a post-hearing brief. DUA did not exactly do either. On December 30, 2022, it emailed me as follows:

After internal discussions regarding this matter, DUA has elected not to submit a closing hearing memorandum. Instead, it rests on the evidence and testimony at the hearing to support its contention that Ms. Hardy is subject to disqualification under G.L. c. 151A, s. 25(e)(1).

I'm not sure what to make of DUA's not following the arrangement and its ambiguous email. DUA contends that Mrs. Hardy should not receive unemployment benefits but not strongly enough to submit a post-hearing brief? DUA does not want to expend further resources after hearing my skepticism?

Findings of Fact

1. Before working at DUA, Mrs. Hardy worked at a call center. (Testimony)
2. At the call center, Mrs. Hardy had to take calls back to back to back, nonstop.

Hundreds of calls waited in a queue to be answered. The call center timed calls, listened in on calls, and graded call center representatives on how well they handled calls. If representatives did not meet a metric, the call center placed them on probation. (Testimony)

3. Mrs. Hardy found working at a call center stressful and harmful to her mental health. (Testimony)

4. Mrs. Hardy conferred with her primary care doctor about the stress of working in a call center. (Testimony)

5. Later, for the purpose of this appeal, Mrs. Hardy's doctor wrote a To Whom It May Concern letter as follows:

We treat her for Hypertension and Anxiety. She is unable to perform in a call center situation due to her diagnosis.

(Ex. 11)

6. Mrs. Hardy decided to stay at her call center job until she found another job. (Testimony)

7. Mrs. Hardy found a job listing for Job Service Representative I at DUA. The summary of the job did not include receiving telephone calls as in a call center. (Testimony)

8. The description of the duties of a Job Service Representative I (Limited Duration) was:

[M]ake determinations on eligibility for benefits in disputed claims after gathering necessary information through interviews; issue timely notices of such determinations, together with the rationale behind there [sic], to parties in accordance with Massachusetts Employment Security Law; and perform related work as required.

(Ex. 6)¹

¹ The job description was not directly in evidence. It appears in Mrs. Hardy's answers to DUA's questionnaire of September 19, 2022. She stated that she had cut and pasted the job duties from the job posting. (Ex. 6) DUA did not argue or indicate that it could assign Mrs. Hardy to its call center based on the "perform related work as required" language.

9. The job description did not include call center work. (Ex. 6)

10. Mrs. Hardy applied for the job and received an interview from DUA. (Testimony)

11. During the interview, Mrs. Hardy confirmed that the job would not entail working in a call center. The DUA interviewer said that the job might entail making outgoing telephone calls to collect information. (Testimony)²

12. When the DUA interviewer asked why she wanted to leave a permanent job for a DUA limited duration job, Mrs. Hardy said that she did not want to work in a call center anymore. (Testimony)

13. When DUA offered Mrs. Hardy the job, she accepted it. (Testimony)

14. Mrs. Hardy wanted to leave her job at the call center so much that she left her permanent job there to accept a limited duration job at DUA that paid \$5 per hour less than her call center job. (Testimony)

15. On April 25, 2022 Mrs. Hardy started working at DUA. (Testimony)

16. During Mrs. Hardy's training at DUA, her supervisor told that she would be trained to take incoming calls. Mrs. Hardy said that she did not want to take incoming calls. The supervisor told Mrs. Hardy not to worry, part of training entailed training to take incoming calls, training to take incoming calls would last only a few days, and the telephones would not be busy.

(Testimony)

17. Mrs. Hardy underwent training at DUA on taking incoming calls. She found it to be

² During the hearing, DUA's cross-examination of Mrs. Hardy seemed designed to equate the occasional outgoing calls that Mrs. Hardy had to make to collect information as a Job Service Representative with receiving constant back-to-back-to-back incoming calls in DUA's call center. Both tasks involve talking to unemployed people on the telephone, but I find no equivalency or similarity otherwise.

not a bad experience. She then resumed training for the duties that she was hired to perform.
(Testimony)

18. On July 28, 2022 Mrs. Hardy's supervisor called a meeting for 1:00 p.m. At the meeting, the supervisor announced that Mrs. Hardy and some of her coworkers would be trained for one hour and then assigned to DUA's call center. (Testimony)

19. Mrs. Hardy asked why she was being assigned to take incoming telephone calls. Her supervisor said that DUA had released an outside vendor that had been taking incoming telephone calls. Mrs. Hardy asked if there were a way for her keep doing the tasks that she was hired to do. The supervisor talked to her manager, who called Mrs. Hardy and said things along the following lines: I talked to my director. We have nothing else for you to do. You have to go on the phones like everyone else. (Testimony)

20. Mrs. Hardy told the manager the following things: When I was hired, I believed that I would not be on the phones. I left my other job making \$5 per hour more to come to DUA. I took a chance taking a limited duration job, all because I didn't want to be on the phones. (Testimony)

21. Mrs. Hardy gave notice to DUA that day. Her email said in part: "It[']s been a pleasure working with you. Unfortunately, I do have to resign from my position effective at 5:00 p.m." (Ex. 3)

22. On August 5, 2022 DUA sent Mrs. Hardy a questionnaire "to determine your eligibility to receive unemployment benefits." It stated that DUA "has received information that may affect your claim for unemployment benefits." (Ex. 5, p. 1) (The record does not reveal what that information was or how DUA received it.)

23. When asked what reason she gave for quitting, Mrs. Hardy wrote:

They wanted me to on the phones for customer service. I explained that I left my other full time job making more money because it was a call center job and I no

longer wanted to be on the phones at an inbound call center for mental health reasons.

(Ex. 5, p. 2)

24. When asked what the employer's response was, Mrs. Hardy wrote:

They said that it was a new change that was implemented and that it would require me to take inbound calls now as a part of my job.

(Ex. 5, p. 2)

25. When asked any other information that she had wanted DUA to consider, Mrs. Hardy wrote:

I tried to find out if there was anything else I could do and after asking, both the supervisor and the manager said that there wasn't. So I had to resign to protect my mental health.

(Ex. 5, p. 5)

26. On August 18, 2022 DUA sent Mrs. Hardy a Notice of Disqualification. It stated:

You chose to leave your work when you were permanently transferred to new duties. Since the new work is considered suitable, your leaving work is determined to be voluntary and without good cause attributable to the employing unit.

You had been regularly employed as a claims adjuster and was [sic] required to take incoming jobs as part of your new job duties.

(Ex. 8)

27. The Notice of Disqualification cited G.L. c. 151A, §25(e)(1). (Ex. 8)

28. On the same day that DUA issued its Notice of Disqualification, Mrs. Hardy timely appealed. (Ex. 9)

29. When asked to describe the reason for her appeal, Mrs. Hardy wrote:

I was hired for a job and then had to do another job that I had left my previous employment for.

(Ex. 9)

30. On September 19, 2022 DUA gave Mrs. Hardy another questionnaire. (Ex. 6) (The record does not reveal why DUA gave her this questionnaire after denying her benefits.)

31. When asked what her job duties were when she had been offered the job, Mrs. Hardy wrote, “My job duties were Claims adjudication. Not incoming calls at a call center.” (Ex. 6, p. 1)

32. When asked, “Were you told that you would be on the phones for customer service when you were offered the position?,” Mrs. Hardy wrote

I was told that I may have to make outbound calls to claimants for more information. Not take incoming calls at a call center.

(Ex. 6)

33. To evaluate Mrs. Hardy’s claim, DUA also asked itself as an employer to provide information. A person from DUA’s Human Resources filled in the form. (Ex. 7)

34. When asked, “What reason did the claimant give for quitting?,” DUA answered, “None.” (Ex. 7)³

35. When asked what its response was, DUA answered, “Accepted.” (Ex. 7)

36. When asked, “Did the claimant quit because s/he was transferred to a new position?,” DUA answered “No.” (Ex. 7)

37. On September 20, 2022 DUA referred Mrs. Hardy’s appeal to the Division of Administrative Law Appeals for a hearing. (Letter from DUA Hearings Department to Edward B. McGrath, Sept. 20, 2022)

Discussion

G.L. c. 151A, §25(e)(1) bars a person from receiving unemployment benefits if

³ This answer was not correct. The record does not explain why DUA answered incorrectly.

the person “left work voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit”

A person who leaves work voluntarily may also receive unemployment benefits if the person establishes that the “reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.” This exception does not seem applicable to this appeal. That is, “cause for leaving attributable to the employing unit” need only be “good”; it does not need to be “urgent, compelling and necessitous.”

Mrs. Hardy’s reason to leave her job was good. She adamantly did not want to work in a call center because it hurt her mental health. She diligently tried to ensure that the new DUA job she was taking did not entail working in a call center – and DUA ended up assigning her to a call center, which made her leaving attributable to her employer. *See* Board of Review Decision 0019 5811 74 (Sept. 13, 2017) (employee left job for good cause attributable to the employer because she had been assured that she would not have to work on her Sabbath, and she was pressured to work on her Sabbath, affecting her mental health).

Although DUA’s notice of disqualification to Mrs. Hardy cited G.L. c. 151A, §25(e)(1), it also stated that “the new work” that she had been assigned “is considered suitable” (Ex. 8), which may have referred to §25(c), which states: “‘Suitable employment,’ as used in this subsection” (that is §25(c), and not §25(e), under which Mrs. Hardy was disqualified for unemployment benefits), “shall be determined by the commissioner” (that is the Director of Unemployment Assistance, see G.L. c. 151A, §1), “who shall take into consideration whether the employment is detrimental to the health, safety or morals

of an employee....” See Board of Review Decision 0002 2744 49 (July 31, 2014) (ruling for claimant under § 25(e)(1) “because the detrimental change to his terms and conditions of employment rendered his job unsuitable”).

To the extent that suitable employment is at issue in this appeal, DUA may have *considered* whether its assignment of Mrs. Hardy to its call center was detrimental to her mental health, but it did not decide the issue correctly. Mrs. Hardy established that working in a call center was detrimental to her mental health. The new duties of working in a call center made the job unsuitable for her.

Conclusion and Order

The Department of Unemployment Assistance’s disqualification of Mrs. Hardy to receive unemployment benefits is reversed. Mrs. Hardy is eligible to receive unemployment benefits and should receive them.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Kenneth Bresler
Administrative Magistrate

Dated: March 9, 2023