



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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**BOARD OF REVIEW
DECISION**

In the matter of:

Appeal number: **BR-118676**

CLAIMANT APPELLANT:

EMPLOYING UNIT:

S.S. #XXX-XX
Hearings Docket #565117

Introduction and Procedural History of this Appeal

The claimant appeals a decision by JoAnn Amico, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits following the claimant's separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant separated from her position with the employer on September 29, 2009. She filed a claim for unemployment benefits with the DUA, which was approved. On September 30, 2010, the agency sent the claimant a Notice of Redetermination and Overpayment, informing her that she was not eligible for benefits and had been overpaid \$16,487.00. The claimant appealed the redetermination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's redetermination and denied benefits in a decision rendered on March 31, 2011.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without either good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was disqualified, under G.L. c. 151A, §§ 25(e)(1) and 25(e). 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 take further testimony to clarify the nature of the new job the claimant planned to begin after her resignation from this employer, including what her hours would be and what benefits she would receive. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the claimant, who knew she would soon be without health insurance when her divorce from her husband was finalized, resigned her position either for good cause attributable to the employer or for urgent, compelling, and necessitous reasons, where she left her job with the instant employer for a new part-time, permanent job which offered more hours and health benefits.

Findings of Fact

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

1. The claimant filed for benefits on 9/11/09, and continued to work 16 to 24 hours per week for the instant employer, until her separation from employment on 9/29/09.
2. The claimant's benefit rate was \$452 per week and the claimant received a \$50 per week dependent child benefit, for her two dependent children.
3. The claimant was disqualified for benefits on 9/30/10, under Section 25(e)(1) of the Law for failure to establish a reason for quitting her job with the instant employer. A constructive deduction was established with an earnings exclusion of \$150.67, which is 1/3 of the claimant's benefit rate.
4. The claimant was paid benefits from 10/03/09 to 5/15/10, and because of the disqualification, an overpayment for the weeks between 10/03/09 and 5/15/10 was established. The subsequent redetermination stated that the overpayment was due to an error without fraudulent intent; therefore, no interest will be charged on the unpaid balance.
5. No evidence was presented to show that this overpayment was due to fraud.
6. The claimant worked part-time as a dental hygienist for the instant employer, (Employer A), a dentist, from 2005 to 9/29/09. The claimant worked between 16 and 24 hours per week at a rate of pay of \$37 per hour. Employer A offered no health insurance benefits and offered no other type of benefit.
7. The claimant worked sporadically as a dental hygienist for another employer, (Employer B), throughout the entire base period and this employment ended in September 2009.
8. The claimant worked 8 to 16 hours as a dental hygienist for another employer, (Employer C), during the base period of this claim, from

November 2008 to May 2009. The claimant worked for Employer C a few times in June and July 2009.

9. Employer C required the claimant to provide dental care to school-aged children during the school year and during the summer at summer camps and other summer programs.
10. The claimant was not offered health insurance from Employer C, as health insurance is only offered to employees who work at least 21 hours per week.
11. The claimant was able to work for Employer A and Employer C simultaneously between November 2008 and July 2009, because the claimant was able to commit to Mondays and Thursdays for Employer A and worked the other 1 to 2 days per week for Employer C on other days of the week.
12. The claimant believed that the position with Employer C was a permanent position that would offer her hours year-round. The claimant planned on returning in late September 2009. The claimant did not re-apply for this position after she worked from November 2008 to July 2009.
13. Employer C offered her work 3 to 4 days per week, or 24 to 32 hours, at a rate of pay of \$40 per hour, starting in September 2009. The claimant believed that the 24 to 32 hours of work per week would extend to June and July 2010.
14. The claimant would be notified of her work schedule for Employer C, 1 week in advance. The claimant could not commit to working specific hours and dates for Employer A while she planned on working for Employer C, because she received her schedule 1 week in advance.
15. The claimant believed she was able to obtain health insurance benefits through Employer C, as she was to work more than 21 hours per week. Employer C would pay 80% of the claimant's health and dental insurance and the claimant would make a monthly pre-tax contribution to her health insurance benefits of \$128.
16. The claimant gave verbal notice of her resignation to Employer A in late August/early September 2009. She told the owner she was leaving to take another position.
17. The claimant chose to resign from Employer A and work for Employer C, because Employer C offered the claimant health insurance benefits.

18. The claimant and her husband were going through a divorce at this time. The claimant's husband, employed by the Coast Guard, was not able to provide the claimant with health insurance benefits after the divorce became final, due to the nature of his health insurance benefits, TriCare.
19. The claimant could not stay on her husband's health insurance plan after their divorce because TriCare requires spouses to have been married for a specific amount of time in order for the non-Coast Guard spouse to be eligible for health insurance benefits after a divorce, and the claimant's marriage lasted for a shorter amount of time than TriCare's requirement.
20. The claimant's husband was able to provide their children with health insurance benefits, so the claimant needed to find health insurance for herself.
21. The claimant applied for MassHealth and Commonwealth Care health insurance, which are state and federally subsidized health insurance plans, but the claimant was not eligible because her income was too high.
22. The claimant researched private health insurance options, but could not afford these options, as the options she found required her to pay between \$400 and \$1,000 in monthly premiums, along with a \$2,000 deduction.
23. On 9/11/09, Employer C informed the claimant that her position would not be renewed, as there was not enough money in the employer's budget to keep the claimant's position.
24. The claimant did not ask for re-employment with Employer A, as Employer A found a replacement for the claimant to work after the claimant's last day on 9/29/09.
25. Employer C gave the claimant a letter stating that the claimant was offered a position as a dental hygienist and was to begin in September 2009, but that the claimant's position was not renewed, as the program was restructuring. The letter stated that the claimant gave her notice to the instant employer before she received notification that her position with the other employer would no longer be renewed.
26. The claimant asked Employer C for documentation showing her work schedule and pay rate, but Employer C only gave the claimant the above letter and would give the claimant no other information about the position.
27. The claimant remained on her husband's health insurance until their divorce became final in early 2010.

Ruling of the Board

The Board adopts the review examiner's consolidated 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.

The review examiner found that the claimant resigned her position with the instant employer to begin another position that offered her more hours and health insurance benefits. However, the instant employer had not decreased the claimant's hours, changed her rate of compensation, or cancelled employment benefits promised to her at hire. Therefore, there is no basis here to conclude that the claimant had good cause attributable to this employer for leaving her job. *See Uvello v. Dir. of Div. of Employment Security*, 396 Mass. 812, 816 (1986) (employer's change to job duties and job hours may be good cause to quit employment); G.L. c. 151A, § 25(c) (listing factors to be considered when determining whether work is suitable).

G.L. c. 151A, § 25(e), provides in pertinent part, as follows:

. . . An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

This case also requires us to consider another provision of G.L. c. 151A, § 25(e), which provides, in relevant 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 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. . . .

The review examiner found that the claimant left her job with the instant employer to accept a new permanent position with another employer. The claimant presented evidence showing that the new job had been formally offered but budget constraints eventually meant the elimination of the position. Under this scenario, the claimant may be eligible for benefits under G.L. c. 151A, § 25(e), which provides for situations in which a claimant accepts a new full-time position in good faith, but is then separated from the new employer for good cause attributable to that employing unit.

In this case, however, the review examiner found that the new permanent job would offer her twenty-four to thirty-two hours per week. Therefore, this was not a "permanent full-time" job as contemplated in G.L. c. 151A, § 25(e). We recognize that the unemployment law should be "construed liberally in aid of its purpose." G.L. c. 151A, § 74. Nevertheless, a liberal interpretation does not mean ignoring or changing the straightforward, clear text of the statute. If

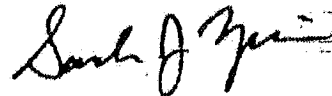
the Legislature had intended for this exception to apply to claimants who left part-time jobs for other part-time jobs even if the new jobs had an increase in hours, pay or benefits, it would have done so. Under current law, we are not willing to accept that a job offering twenty-four to thirty-two hours per week is full-time. The claimant's situation is not covered.

Accordingly, we need not consider whether the claimant left her job for urgent, compelling, and necessitous reasons by virtue of her reasonable belief that she was in danger of losing health care coverage due to an impending divorce.

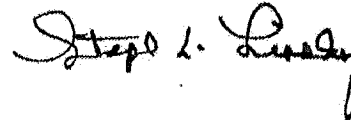
We, therefore, conclude as a matter of law that the claimant resigned her job without good cause attributable to the employer or urgent, compelling, and necessitous reasons.

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending September 12, 2009 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 – October 18, 2011



Sandor J. Zapolin
Member



Stephen M. Linsky, Esq.
Member

Chairman John A. King, Esq. declines to sign the majority opinion

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- November 17, 2011