



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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**BOARD OF REVIEW
DECISION**

JOHN A. KING, ESQ.
CHAIRMAN
SANDOR J. ZAPOLIN
MEMBER
STEPHEN M. LINSKY, ESQ.
MEMBER

In the matter of:

Appeal number:

BR-111185

CLAIMANT APPELLANT:

EMPLOYING UNIT:
Professional Staffing Group
c/o USC
P.O. Box 346
Wakefield, MA 01880

S.S. # XXX-XX
Hearings Docket

EMP. # 82-706140

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Cheryl Lynch, a review examiner of the Division 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 reverse.

The claimant became separated from employment on March 20, 2009. She filed a claim for unemployment benefits with the DUA, which was granted in a determination issued by the agency on April 14, 2009. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, which both parties attended, a DUA review examiner overturned the agency's initial determination and denied the claimant benefits in a decision rendered on August 19, 2009.

Benefits were denied after the review examiner determined that the claimant became separated voluntarily without good cause attributable to the employer and, thus, was subject to disqualification, pursuant to G.L. c. 151A, § 25(e)(1). After considering the recorded testimony and evidence from the DUA hearing, the DUA review examiner's decision, and the claimant's appeal, we remanded the case back to the review examiner to take additional evidence. Thereafter, the review examiner conducted a remand hearing, which both parties attended, and issued her consolidated findings of fact. Our decision is based upon our review of the entire record, including the decision below and the consolidated findings.

The issue before the Board is whether the claimant, who concededly refused an offer of further employment from her temporary placement agency employer, nonetheless did so for good cause because it was a short-term temporary job assignment at reduced pay, offered by the employer after its client had abruptly terminated the claimant's prior long-term assignment.

Findings of Fact

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

1. The claimant worked for the employer from September 2007 until her separation from her employment on March 20, 2009.
2. The claimant worked as a temporary placement employee for the employer's temporary staffing agency.
3. The employer provides employees with a policy acknowledgement sheet containing employment information, including a Notice of Availability passage.
4. On September 15, 2007, the claimant signed a policy acknowledgement sheet of having received the Notice of Availability, stating:

"As a temporary employee of [the employer], I may be assigned to work for a period of time at one of [the employer's] clients companies. When this temporary assignment is completed, I understand that I must contact [the employer] to request reassignment or to inform [the employer] that I am no longer looking for work.

"I understand that failure to contact [the employer] before filing a claim for unemployment insurance benefits may result in denial of those benefits."
5. The Notice of Availability does not provide any contact information or instructions for the employee to use in requesting reassignment from the employer. No contact name, telephone number, address or email for the employer is provided on the Notice of Availability.
6. In September 2007, the claimant accepted an open-ended assignment from the employer earning \$10 per hour. The claimant worked full time as a mail clerk at the site of the employer's client, a computer systems company in Cambridge. The claimant's job primarily involved opening, organizing and batching healthcare forms for scanning.

7. At the time the claimant and the employer discussed the assignment, the employer indicated it would be an "indefinite" assignment. The claimant had not made any inquiry or request of the employer as to the length of assignment.
8. The Cambridge client does not typically hire temporary workers, and the employer never indicated the assignment was temp-to-perm or the claimant could expect to be hired by the client, nor did the claimant ask about that.
9. The claimant had been referred to the employer by her friend, who was already in an indefinite temporary assignment at the Cambridge client's site. Approximately five other employees were placed in similar indefinite temporary assignments at the Cambridge client site, some of whom had been there long term (over a year).
10. When she accepted the assignment to the Cambridge client, the claimant expected the assignment to be indefinite but likely long term, since her friend had already been working for the employer for some time.
11. It is unknown if the employer and the claimant had any contact regarding the assignment status after September 2007 and prior to March 20, 2009.
12. On March 20, 2009, the employer's Staffing Manager notified its mail clerk temporary employees at the computer systems company, including the claimant, that the assignment was ending that day. The assignment ended suddenly due to the needs of the client's project.
13. On March 20, 2009, the Staffing Manager offered the displaced employees, including the claimant, a new assignment. The new assignment was a six-week full time assignment in Chelsea at the client, the Department of Revenue, working as clerical worker earning \$9.00 per hour. The duties would have been clerical duties similar to those the claimant had her in assignment worked in Cambridge.
14. The claimant notified the Staffing Manager that she was declining the new assignment. The claimant did not accept the assignment because she did not want to be out of work again in six weeks and she did not want to accept an assignment with the pay rate of \$9.00 per hour (\$1.00 per hour less than her prior assignment). The claimant informed the employer of her above-stated reasons for declining the assignment.
15. The claimant decided to do her own job search for more long-term or permanent employment. The claimant had never informed the employer that she was interested in a more long-term or permanent employment opportunity.

16. The claimant never worked any other assignment for the employer.
17. The claimant filed a claim for unemployment insurance benefits on March 23, 2009.
18. In April 2009 and again in June 2009, the claimant contacted the employer's Senior Staffing Manager seeking new assignments.
19. The claimant had never worked for a temporary staffing agency prior to September 2007.
20. Prior to starting with the employer, the claimant worked for a children's center as a Daycare Teacher, working with children of ages eight months to one year. From January 1993 until August 2007, the claimant worked for the center full time earning \$11.75 per hour performing duties including caring for the children, making progress reports, coordinating activities, meeting with parents and preparing meals.
21. Prior to the work for the children's center, the claimant took a year off from work, staying with and caring for with her grandmother in Alabama.
22. From 1987 through 1992, the claimant worked as a patient transporter for a hospital. The details of the employment agreement between the claimant and the hospital are unknown.
23. The claimant graduated from public high school in Boston in 1988. The claimant attended Urban College in Boston in the mid-1990s, taking a Child Growth and Development course and an Observing and Recording course.

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 denied benefits after analyzing the claimant's separation, under G.L. c. 151A, § 25(e)(1), which 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....

Under G.L. c. 151A, § 25(e)(1), it is the claimant's burden to establish that her separation was for good cause attributable to the employer. At the initial hearing, the review examiner concluded that the claimant did not meet her burden. We remanded the case to take additional evidence regarding the claimant's employment history and her communications with the employer regarding the type of position she deemed to be suitable. Following remand, we conclude that the claimant has met her burden.

The claimant worked as a temporary employee for one of the employer's clients. The placement lasted approximately one and one-half years. The claimant only performed services for that one client while she worked for the employer. She learned of the position from a friend, who had also worked as a temporary employee of the employer on long-term assignment to the same client since before the claimant's hire. Several other workers were employed on the same terms, some of whom had already been on the job more than a year.

The position the claimant held was open-ended, and was described to her by the employer as "indefinite" in length. The claimant's expectation upon starting this assignment was that it would be a long-term one, such as could fairly be seen as tantamount to "permanent."

The claimant worked as a mail clerk for that client. Her duties included opening, organizing, and batching health care forms for scanning. She was paid \$10.00 per hour by the employer.

On March 20, 2009, the employer's client abruptly ended the assignment for the employer's temporary employees, including the claimant. The employer offered the claimant a six-week clerical assignment with another client, performing similar tasks, at a lower pay rate of \$9.00 per hour. The claimant declined that placement, citing the lower pay rate and short duration of the assignment. Viewed together with her prior work history, which reflected long tenures and higher rates of compensation (*see* Consolidated Finding #20), we conclude that the claimant had good cause for declining the offer, as it was not suitable. Moreover, the claimant's engagement in a subsequent, though unsuccessful, job search for potentially longer tenured and more highly compensated employment supports the good faith basis for her declining the offer.

We, therefore, conclude as a matter of law that the claimant's separation was for good cause attributable to the employer.

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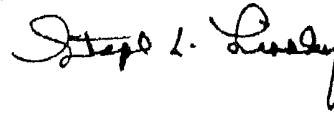
BR-111185

The review examiner's decision is reversed. The claimant is eligible to receive benefits for the week ending March 28, 2009 and for subsequent weeks if otherwise eligible.



John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - March 3, 2010



Stephen M. Linksy, Esq.
Member

Member Sandor J. Zapolin 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 - April 2, 2010

COMMONWEALTH OF MASSACHUSETTS
GENERAL LAWS CHAPTER 151A, SECTION 42

APPEALS TO THE COURTS

"The commissioner or any interested person aggrieved by any decision in any proceeding before the board of review may obtain judicial review of such decision by commencing within thirty days of the date of mailing of such decision, a civil action in the district court within the judicial district in which he lives, or is or was last employed, or has his usual place of business, and in such proceeding, every other party to the proceeding before the board shall be made a defendant. If an appeal to the board of review is deemed denied pursuant to subsection (a) of section forty-one because the board failed to act upon such appeal, judicial review may be obtained by commencing a civil action as prescribed in the preceding sentence, except that the time for commencing such action shall run from the date such appeal is deemed denied. The commissioner shall be deemed to have been a party to any such proceeding before the board. The complaint shall state the grounds upon which such review is sought. The plaintiff shall serve a copy of the complaint upon each defendant by registered or certified mail, return receipt requested, within seven days after commencing the action for judicial review.

Except as otherwise provided in this section, or if inconsistent with the provisions of this section, such proceeding shall be governed by the Rules of Civil Procedure for the district courts and the municipal court of the city of Boston. The findings and decisions of the board shall be reviewed in accordance with the standards for review provided in paragraph (7) of section fourteen of chapter thirty A. Any proceeding under this section shall be given precedence over all other civil cases.

An appeal may be taken from the decision of the justice of the district court directly to the appeals court. Notice of appeal shall be filed in the office of the clerk of the district court within thirty days after entry of the judgment by the clerk. The completion of such appeal shall be made in accordance with the Massachusetts Rules of Appellate Procedure. Benefits shall be paid or denied in accordance with the decision of the trial court justice during the pendency of such appeal."

The commissioner shall make every reasonable effort to file with the court a certified copy of the decision of the board of review, including all documents and a transcript of all testimony taken at the hearing before said board or the commissioner as the case may be, within twenty-eight days after service of the complaint upon the commissioner or within twenty-eight days after the commencement of the action for judicial review by the commissioner. Each defendant shall file an answer within twenty-eight days after receipt of the complaint, except that the commissioner may, by way of answer, file in court within such time period a certified copy of the record of the proceeding under review.

IMPORTANT

This notice contains information about your rights or obligations, and should be translated immediately. If you need a translator, ask for a listing of translation services at your DUA office.

ВАЖНОЕ СООБЩЕНИЕ

В этом сообщении содержится информация о Ваших правах и обязанностях, и оно должно быть срочно переведено Вам. Если Вам нужен переводчик, попросите список переводческих компаний в своем DUA офисе.

IMPORTANTE

Este aviso incluye información sobre sus derechos y obligaciones, y debe traducirse de inmediato. Si necesita un traductor, solicite el listado de servicios de traducción en la oficina de la DUA correspondiente.

IMPORTANTE

Questo avviso contiene informazioni sui Suoi diritti ed obblighi e deve essere tradotto immediatamente. Se ha bisogno di un traduttore, chiedi l'elenco dei servizi di traduzione presso la DUA.

IMPORTANTE

Este comunicado contém informações sobre os seus direitos ou obrigações. Ele deve ser traduzido prontamente. Se precisar de um tradutor, solicite no escritório DUA mais próximo uma lista dos serviços de tradução.

ສຳລັບ ງານສຳຄັນສະຖານທີ່ນີ້ມີຜູ້ປຶກສາ ແລະ ທ່ານຕ້ອງຮຽນ ຄຳອັກສອນ ທີ່ ບ້ານສະພາລາສະຕິກອຸດຕາງ ຫຼື ຂອງທຸກລາຍງານໂລກ. ຖ້າ ທ່ານໃຊ້ຜູ້ປຶກສາ, ໃຫ້ຮຽນ ລາຍການບໍລິການແປພາສາທີ່ ມີໄວ້ໃຫ້ໃຊ້ໃນນີ້. ການຕ້ອງການ DUA ຂອງທ່ານ

လစာ

ကဏ္ဍသတ်သတ် အချက်အလက်အပေါ်တွင် အထောက်အကူပြုရန် ဝန်ထမ်းများသည် မိမိတို့ ၏ ပစ္စည်းပစ္စုပ္ပန်များကို ထုတ်ဖော်ဖော်ပြနိုင်ရန် စောင့်ဆိုင်းရမည်။ (အစောဆုံးအထိမ်းအမှတ် DUA ထုတ်ပေးရန်)

ENPÖTIAN

Nét sa a genyen enfòmasyon sou dwa w oubyen obligasyon ke ou genyen, epi ou fèt pou ou fè tradwi li kounyè a. Si ou bezwen ou moun ki pou tradwi pou ou, mande ou lis ki genyen sèvis ke yo ofri pou tradiksyon nan biwo DUA ke ou konn sit a.

QUAN TRONG

Thông báo này bao gồm thông tin về quyền hạn hoặc trách nhiệm của quý vị và phải được thông dịch ngay. Nếu cần một thông dịch viên, hãy yêu cầu một danh sách dịch vụ thông dịch tại văn phòng DUA của quý vị.

重要

本通知包含有關閣下權利或義務的資訊，應即時翻釋。如果閣下需要翻譯人員，請到閣下的DUA辦事處要求一份翻譯社的名單。

