

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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BOARD OF REVIEW DECISION

In the matt& of:

Appeal number: BR-118830

EMPLOYING UNIT APPELLANT:

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Introduction and Procedural History of this Appeal

The claimant appeals a decision by Thomas Ritacco, 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 December 23, 2010. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 24, 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 April 12, 2011. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant filed for unemployment benefits after completing an assignment with a temporary help agency, but before requesting a new assignment. 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 requested a new assignment before filing for benefits.

Findings of Fact

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

1. The claimant reopened his claim for benefits effective the w/e 1/1/11. He was thereafter paid benefits. The benefits here in issue and paid pertain to the w/e 1/1/11 and 1/8/11. The claimant's weekly benefit rate was \$219.00 plus \$50.00 per week dependency allowances.
2. Subsequent thereto, additional information was received which made necessary a notice of redetermination and overpayment which disqualified the claimant from receiving benefits for the week ending 1/1/11 and until the claimant has had 8 weeks of work and in each of said weeks has earned an amount equal to or in excess of his weekly benefit amount.
3. That redetermination was issued on 1/24/11, under Section 25(e)(1) and 71 of the Law. An overpayment in the amount of \$538.00 was established. Misrepresentation was not indicated and no surcharge was levied on the balance of the overpayment.

While on a continued claim for benefits, the claimant accepted work with the instant employer, a temporary services agency.

5. The claimant was employed as a full time assembler from 7/19/10 until 12/23/10, when the indefinite assignment ended.
6. On 7/19/10, when the claimant originally applied for temporary work with this agency, he signed a document which informed him that he must contact the employer when an assignment ends and prior to the filing of an unemployment claim, to discuss/request additional work. The document also informed him that failure to do so could result in the denial of unemployment benefits as a voluntary quit.
7. The claimant reopened his claim on 12/28/10.
8. On 12/23/10, prior to his reporting for work, the work site employer, and the agency, notified the claimant that the assignment was ending due to a lack of work.
9. The claimant was told he had to call the agency for more work the next week since 12/24/10 was a holiday.

10. The employer does not have any written record that the claimant contacted the office prior to his reopening his claim on 12/28/10. The employer's practice is to make computer entries to record activity with each client. •
11. The claimant recalled that he called the agency on 12/27/10, but no one was there due to a snow storm. The employer, however, did not close and there were representatives present to take calls. The employer also had no record that the claimant reported to the office on 12/28/10 to discuss further work.

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)(l), 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 plan 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 review examiner denied benefits based on his finding that the claimant did not call the office and request a new assignment prior to claiming benefits, We reverse, because the review examiner found (see Findings of Fact #8 and #9) that the claimant and the employer spoke about the ending of her current assignment and prospects for additional assignments on December 23, 2010.

In our view, this conversation was sufficient to satisfy the so called "temp call-in" requirements of G.L. c. 151A, § 25(e), as set forth above. Although the claimant and the employer both testified that the employer told the claimant to call for a new assignment after the holiday, we are persuaded that the December 23, 2010 telephone conversation included in substance a request for a new assignment. Therefore, while the employer may have, asked the claimant to call later, we

are unwilling to bootstrap this request for what was really a *second* contact into a requirement, under G.L. c. 151A, § 25(e)

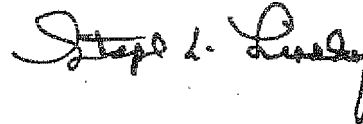
We, therefore, conclude as a matter of law that the claimant is not disqualified, under G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending January 11, 2011 and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF MAILING — November 8, 2011



John A. King, Esq.
Chairman



Stephen M. Linsky, 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- December 8, 2011