



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-112947-CTRM**

**CLAIMANT APPELLANT:**

**EMPLOYING UNIT:**

Tighe Trucking, Inc.  
481 Wildwood Ave.  
Woburn, MA 01880

EMP. # 60-013700

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Jeannie G. Peña, 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 filed a claim for unemployment benefits, which was granted in a determination issued by the agency on May 13, 2009. The employer appealed to the DUA Hearings Department. Following a hearing on the merits, which both parties attended, the review examiner reversed the agency's initial determination in a decision rendered on July 15, 2009. Benefits were denied on the ground that the claimant quit without good cause attributable to the employer and, thus, was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1). The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On February 10, 2010, the District Court ordered the Board to obtain further evidence into whether the claimant's pay decreased prior to his separation, what efforts the claimant made to preserve his job before quitting, and whether the employer told the claimant it expected business to improve in the future. Consistent with this order, we remanded the case to the DUA review examiner to take additional evidence and make new consolidated findings of fact. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The Board has reviewed the written record and recordings of the testimony presented at the DUA hearings.

The issue on appeal is whether the claimant, who left work on January 11, 2008 because of a reduction in earnings, quit for good cause attributable to the employer.

Findings of Fact

The DUA review examiner's consolidated findings of fact, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant worked as a "Driver" for the employer from September 11, 2006, until January 11, 2008, when he was separated.
2. The claimant worked a varied fulltime schedule of hours.
3. The claimant left work because of a reduction in earnings.
4. When the claimant began work, the employer explained its pay structure. All drivers are hired to do both miles and hours. Long haul drivers are typically paid by the mile. Short haul drivers are typically paid an hourly rate. A driver must have 3 stops on a run to be paid an hourly rate of pay.
5. The driver assignments to drive long haul and short haul fluctuates [sic] back and forth. The decision on which drivers will drive long or short haul is made by the Transportation Manager.
6. During the course of the claimant's employment, the employer did not make any changes to the terms of employment agreed at the time of hire. The employer paid the claimant's wages when due. The claimant was paid the wages agreed upon at hire. The employer did not change its pay structure or method of payment.
7. The claimant's most recent hourly rate of pay when assigned to a short haul was \$17.52.
8. While working for the employer, the claimant was assigned to short and long haul drives. The claimant did not complain about the employer's pay structure.
9. The paycheck dated November 8, 2007 states the claimant's gross earnings were \$903.99.
10. The paycheck dated November 15, 2007 states the claimant's gross earnings were \$909.85.

11. The paycheck dated November 21, 2007 states the claimant's gross earnings were \$874.08.
12. The paycheck dated November 29, 2007 states the claimant's gross earnings were \$779.78.
13. Due to a lull in business, the claimant's hours decreased in December 2007.
14. Sometime in December 2007, the claimant complained to the General Manager that he was not receiving enough hours. The General Manager replied those were the only hours that employer had available.
15. The paycheck dated December 6, 2007 states the claimant's gross earnings were \$807.75.
16. The paycheck dated December 13, 2007 states the claimant's gross earnings were \$578.77.
17. The paycheck dated December 20, 2007 states the claimant's gross earnings were \$471.19.
18. The paycheck dated December 27, 2007 states the claimant's gross earnings were \$882.17.
19. The paycheck dated January 3, 2008 states the claimant's gross earnings were \$754.30.
20. The paycheck dated January 10, 2008 states the claimant's gross earnings were \$391.87.
21. The claimant was upset because he did not think he had had enough hours. The claimant spoke with Drivers who had worker [sic] longer for the employer who said that, when it is slow, drivers with more seniority are assigned jobs. The claimant thought that work was going to get slower.
22. At that time, the employer had 35 drivers. In terms of seniority, the claimant was a junior driver.
23. The General Manager or any other officer or employee did not tell the claimant that he or she expected business to improve at any time in the future.
24. Due a reduction of earnings, the claimant decided to leave work. The claimant informed the General Manager that he was leaving work in 2 or 3 weeks. The date that the claimant tendered his resignation is not known.

25. The claimant's last physical day at work was January 11, 2008.
26. At the time of the separation, the claimant was not in danger of losing his job for violating any employer policies or expectations. The employer had work available for the claimant.
27. A co-worker who went to work for another company asked the claimant whether he wanted to go [sic] that company. The claimant went to the company to inquire about work. The claimant was hired by the other company on January 13, 2008 or January 14, 2008. The claimant worked for that company for 2 days until he sustained an injury.
28. When he left work with the instant employer, the claimant did not have an offer of permanent, fulltime employment from the other company. The claimant did not have a definite start date. The claimant did not leave work with this employer because he was physically unable to perform his job.
29. A "Separation Report" completed by the employer states that the date of the claimant's separation was January 11, 2008. The section entitled "Reason for Resignation" states, "Unknown." The Separation Report was signed by a manager and dated January 15, 2008.
30. The paycheck dated January 17, 2008 states the claimant's gross earnings were \$277.50.
31. The claimant filed a claim for unemployment benefits on March 9, 2009. The effective date of the claim was established to be March 8, 2009.
32. In November 2007, the claimant's monthly gross pay was \$3672.84. The claimant's gross weekly wage was \$918.21.
33. In December 2007, the claimant's monthly gross pay was \$2739.88. The claimant's gross weekly wage was \$684.97.
34. During the first 2 weeks in January 2008, the claimant's monthly gross pay was \$1146.17. The claimant's gross weekly wage was \$573.09.
35. There was a 38% drop in gross pay.

Ruling of the Board

The Board adopts the DUA 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 his separation was for good cause attributable to the employer. The review examiner initially found that the claimant quit because of general job dissatisfaction, and that he had not met his burden. The District Court remanded the case for additional evidence into whether the claimant's pay increased or decreased prior to his separation, whether he tried to preserve his job before quitting, whether the employer told the claimant it expected business to improve in the future, and where the claimant stood in seniority among his peers. After review, we conclude that the claimant has met his burden.

Following remand, the review examiner found that the claimant quit because of a reduction in his pay. His gross weekly pay decreased from \$917.21 in November 2007, to \$684.97 in December 2007, to \$573.09 for the first two weeks of January 2008. The claimant complained to the general manager that he was not receiving enough hours, but the general manager replied there were no more hours available. No one ever told the claimant that they expected business to improve at any time in the future. Further, the claimant spoke to other drivers, who told him that when business slowed, the employer gave more hours to drivers with more seniority. The claimant was a junior driver in terms of seniority with the employer.

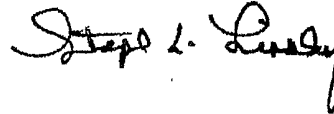
A substantial decline in wages may be viewed as good cause for leaving employment. Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981) (claimant not required to return to work when recalled after layoff, where his earnings were substantially reduced). Here, the claimant's average gross weekly earnings in December 2007 were only 75% of what they were in November 2007. His average gross weekly earnings in January 2008 were only 62% of what they had been in November 2007. We view the claimant's asking the general manager for more hours before quitting as constituting an adequate effort to preserve his job before quitting, especially since the employer never advised the claimant that business would pick up after January. We therefore conclude, as a matter of law, that the claimant quit his job voluntarily, with good cause attributable to the employer.

The DUA review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending March 14, 2009, and for subsequent weeks, if otherwise eligible.



John A. King, Esq.  
Chairman

BOSTON, MASSACHUSETTS  
DATE OF MAILING - February 28, 2011



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- March 30, 2011**

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, chieda 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  
 ງຸ່ມຂອງທ່ານລະອຽດກ່ຽວກັບທັບຜົນ, ຄຳຂໍ້ ທາງການຜົນໂດຍທີ່  
 ຄຳສ່ຽງນີ້ ປະກອບຕ່າງ ໆ ກໍ່ມີສິດລະຜາລະຮັດອອບກາງ ໆ  
 ຂອງທ່ານໄດ້ຮັບທີ່ໂສດ. ຖ້າ ທ່ານຕ້ອງການໃຊ້ຜົນຜະປາສາ, ໃຫ້ຂໍ  
 ລາບການປະການຜົນຜາສາທີ່ ມີໄວ້ໃຫ້ໃຊ້ໃນຖານ. ານຕ້ອງການ  
 DUA ຂອງທ່ານ

**សំខាន់**

លេខស៊ីស្តេមនេះ មានស្ថិតនៅលើកិច្ចប្រយោជន៍ ។ លេខប្រយោជន៍ប្រជាពលរដ្ឋ  
 កម្ពុជា ។ ប្រសិនបើអ្នកត្រូវការប្រកបការងារ ឬ មិនមែនប្រកបការងារ ផងដែរ  
 តែសម្រាប់ការងាររបស់ DUA ប៉ុណ្ណោះ ។

**ENPÒTAN**

Nòt sa a genyen enfòmasyon sou dwa w oubyen obligasyon ke  
 ou genyen, epi ou fèt pou ou fè tradwè l koumyè a, Si ou bezwen  
 on moun ki pou tradwè pou ou, mande on lis ki genyen sèvis ke  
 yo ofri pou tradiksyon nan biwo DUA ke ou konn ale 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，應即刻翻譯。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。

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