



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

Charles F. Hurley Building • 19 Staniford Street • Boston, MA 02114
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BOARD OF REVIEW DECISION

BR-110763 (Mar. 28, 2010) -- When the employer unilaterally cut the claimant's hours in half, the job became unsuitable. Held claimant resigned for good cause attributable to the employer.

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny 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 17, 2009. She filed a claim for unemployment benefits with the DUA, which were denied in a determination issued by the agency on May 21, 2009. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, which both parties attended, a DUA review examiner affirmed the denial of benefits in a decision rendered on July 21, 2009.

Benefits were denied after the review examiner determined that the claimant left work 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 review examiner's decision, and the claimant's appeal, we accepted the case for review and invited the parties to submit their written argument. Only the claimant submitted such written argument. Our decision is based upon our review of the entire record, including the decision below, the claimant's written argument, and the findings.

The issue on appeal is whether the claimant, who concededly quit her job, nonetheless did so for good cause attributable to the employer, after her hours were cut by half to sixteen hours per week.

Findings of Fact

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

1. The claimant applied for benefits on March 24, 2009. The Division disqualified the claimant on May 21, 2009. The claimant appealed on June 3, 2009. The Division granted the claimant good cause for a late appeal on June 6, 2009.
2. The claimant worked for the employer most recently from March 31, 2008 to March 17, 2009. The claimant worked as a full time office worker. In 2009, the claimant agreed to work four instead of five days per week. The claimant worked from 8:00 a.m. to 4:30 p.m. She earned \$11.25 per hour. The claimant reported to the bookkeeper.
3. The employer provides construction supplies to heavy civil work projects.
4. The claimant quit her employment, because she was cut to 16 hours per week.
5. Ending in 1999 or 2000, the claimant had worked for the employer for 17 years. The claimant worked for the current owner's father.
6. On March 17, 2009, the bookkeeper informed the claimant that the employer would reduce her hours by half. The employer made this decision, because the amount of work had declined.
7. The claimant decided that she should quit and did so.
8. The claimant suffers from Melanoma. During her employment, the claimant requested and received time off for her treatments.
9. The claimant receives Medicare A as her primary health insurance provider.
10. The claimant supplements her Medicare A benefits with a policy from AARP. The claimant pays \$650.00 per month for this policy. The claimant does not have to make any co-payments with this supplemental policy. Once the claimant allowed this policy to lapse, she could not regain it.
11. The claimant decided that she could not afford to pay for the policy working two days per week.
12. The claimant did not consider seeking unemployment insurance benefits and continuing to work for the employer.

13. The claimant felt that with a lack of work, the employer should have released her outright. The employer did not do so, because it had work for the claimant at least two days per week and expected that she would fill in additional hours for vacations and other employee absences. The employer expected that the reduction in hours would occur only until the economy improved.
14. While the claimant cleaned out her desk, the employer and the bookkeeper spoke to the claimant.
15. The employer has employees covered by policies from two health care providers. Had the claimant made known her concern about the cost of her supplemental insurance, the employer would have addressed the issue.
16. The employer did not reduce the claimant based upon her intervention in a disagreement between the father and the son.
17. The claimant did not like the language used by the owner.
18. The claimant would have continued to work with employment at four days per week.
19. The claimant had two recent procedures to address her illness.

Ruling of the Board

The Board adopts the DUA 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)(1), 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....

The DUA review examiner concluded at the initial hearing that the claimant left her job voluntarily without good cause for leaving attributable to the employer. We disagree.

The employer unilaterally reduced the claimant's hours by half. The employer's drastic change in the conditions of the claimant's employment made the position per se unsuitable. *See Graves v. Director, Division of Employment Security*, 384 Mass. 766, 768 (1981) and case cited therein.

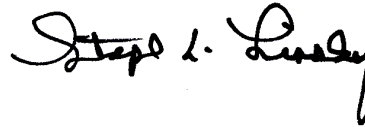
We, therefore, conclude as a matter of law that the claimant sustained her burden to prove that she had good cause attributable to the employer for her resignation.

The DUA review examiner's decision is reversed. The claimant is entitled to benefits under G.L. c. 151A, § 25(e)(1), 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 28, 2010



Stephen M. Linksy, Esq.
Member

Member Sandor J. Zapolin 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 – April 28, 2010