



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.
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MEMBER

SANDOR J. ZAPOLIN
MEMBER

In the matter of:

Appeal number: **BR-105448**

CLAIMANT APPELLANT:

EMPLOYING UNIT:

Office # 02

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 unemployment benefits following her separation from employment. We review pursuant to our authority under G.L. c. 151A, § 41, and reverse.

Benefits were denied on the grounds that the claimant voluntarily separated from the employer without demonstrating that the separation was due either to good cause attributable to the employer or urgent, compelling, and necessitous circumstances, pursuant to G.L. c. 151A, § 25(e)(1). After reviewing the claimant's appeal, the DUA review examiner's decision, and the recorded testimony and evidence from the DUA hearing, we accepted the case for review. Because there were no material facts in controversy and the sole question presented on appeal was an issue of law, we allowed the parties to submit written arguments explaining their reasons for agreeing or disagreeing with the DUA review examiner's decision. Only the claimant submitted a response. Our decision is based upon our review of the record and the decision below.

The claimant separated from the employer on August 21, 2007. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued by the agency on October 10, 2007. The claimant appealed that determination to the DUA hearings department. Following a hearing on the merits, a DUA review examiner affirmed the agency's denial of benefits in a decision rendered on November 8, 2007.

The issue on appeal is whether the claimant's separation from the employer was due to good cause attributable to the employer.

Findings of Fact

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

1. The claimant worked as a Support Manager for the employer, a retail business, from 5-4-05 to about 8-21-07, at a rate of \$13.15 per hour.
2. On or about 8-21-07, the claimant resigned her position because of dissatisfaction with a pay cut, the working conditions, and medical reasons, with the intent of transferring back to her prior location.
3. The claimant worked at the employer's Northampton, MA location until about 8-19-07.
4. The claimant's daughter was pregnant, and the claimant wanted to be closer to her. About the first week of July, the claimant put in for a transfer to the employer's Quincy location. The transfer request was done on line.
5. During the week of July 4th, the claimant went into the Quincy store and spoke to the Manager, who said they were looking for a Support Manager. Two weeks later, the claimant received a call from the Quincy Manager, and the Northampton Manager signed off on the transfer. The claimant was given a date of 8-20-07 to report to the Quincy store.
6. The claimant worked two days and did not like it at the Quincy store. She found out she would not be getting the night shift differential, resulting in a pay reduction from \$13.15 to \$10.50. The claimant had assumed the pay would be the same as in Northampton, and when she questioned why there was no night shift differential, the employer did not know.
7. The claimant found the condition of the store to be a mess. Her duties were to walk the store and help stock shelves.
8. The claimant had sustained a knee injury at work in June. She did not fill out an incident report and she did not file for Worker's Compensation. She did seek medical attention and had missed some work.
9. During the two days that the claimant worked at the Quincy store, her knee was really bothering her. She did not seek medical attention or request any accommodations from the employer.

10. On 8-21-07, the claimant's second day of work, she quit and told the employer that she was going to return to the Northampton store. She did not have a date to return to the Northampton store.
11. On 8-22-07, the claimant called the Northampton store about transferring back. She spoke to the Assistant Store Manager who told her she could return and instructed her to call when she was back in town.
12. On 8-25-07, the claimant returned to Northampton. She called the store and spoke to someone in Human Resources who said it was fine to return, that there was a position in the pharmacy, and to wait for the interview process. At some point, she was contacted and told there was some kind of problem with her application and/or transfer. She fixed that problem. The claimant was never contacted for an interview.
13. At some point the claimant again sought medical attention for her knee, and surgery was scheduled.
14. On 9-18-07, the claimant filed her claim for unemployment benefits.
15. On 9-25-07, the claimant had surgery on her knee, and she was released for light duty work on 10-15-07.

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 DUA hearings department denial was pursuant to 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 ... 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

At the hearing, there was no dispute over the fact that the claimant voluntarily separated from the employer. The issue is whether the claimant has established that her separation from the employer resulted from good cause attributable to the employer. If a claimant can present substantial and credible evidence that shows such good cause, the claimant may be entitled to collect unemployment benefits.

The employer transferred the claimant from its Northampton, MA store to its Quincy, MA store on August 20, 2007, pursuant to a request the claimant had previously submitted to the employer. However, the claimant discovered immediately after this transfer took place that her salary would be reduced by approximately 20% because she no longer would receive a night pay differential. The employer could not explain to the claimant the underlying reason for the absence of a night pay differential that caused this salary reduction. As a result of the salary reduction, the claimant gave notice of her resignation to the employer one day after this transfer took effect. The claimant thus voluntarily quit her position with the employer on August 21, 2007 due to the employer inexplicably reducing her salary.

The statutory provision that controls the outcome in this case, G.L. c. 151A, §25(e)(1), makes clear that a claimant who voluntarily separates from an employer must show that the separation resulted from good cause attributable to the employer. The DUA review examiner concluded that the claimant failed to meet this burden, and that the claimant voluntarily quit her job without demonstrating that the separation resulted from good cause attributable to the employer.

The Board disagrees with this conclusion. The findings demonstrate that the claimant left her job due to dissatisfaction with the employer's working conditions. Yet the specific work condition that triggered the claimant's separation was the employer's reduction of her salary. After the claimant transferred to the employer's Quincy, MA store the employer substantially reduced the claimant's salary by approximately twenty percent without providing any warning or explanation to the claimant. The employer initiated this detrimental change in the claimant's work conditions. Therefore, the claimant's separation resulted from good cause attributable to the employer, since the employer initiated this salary reduction that adversely affected the claimant.

We, therefore, conclude as a matter of law that the claimant's voluntary separation from the employer was due to good cause attributable to the employer, within the meaning of G. L. c. 151A, § 25(e)(1).

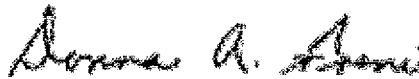
The DUA review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending September 22, 2007, and subsequent weeks, if otherwise eligible.

N.B. In light of the claimant's signing on September 25, 2007, the local office may wish to clarify the claimant's availability pursuant to G.L. c. 151A, §24 and §1005(G) of the Service Representatives Handbook, with respect to the period between her knee surgery on September 25 and her release for light duty on October 15, 2007, and thereafter.

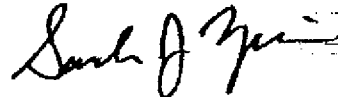


John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - February 11, 2008



Donna A. Freni
Member



Sandor J. Zapolin
Member

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 12, 2008