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-115564

CLAIMANT APPELLANT:

EMPLOYING UNIT:

ig

Hearings Docket # 552986.

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Jennifer J. Rainville, a review examiner of the Division of Unemployment Assistance (DUA), to deny benefits to the claimant following her separation from employment on October 1, 2009. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant resigned from her position with the employer on October 1, 2009. She filed a claim for unemployment benefits with the DUA and was denied benefits in a determination issued on March 25, 2010. 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 August 18, 2010.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue on appeal is whether the claimant resigned from her position with the employer because the wages, hours, and working conditions rendered the job unsuitable.

Findings of Fact

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

1. The claimant was a label operator for the employer, a packaging business, from September 28, 2009 to October 1, 2009, when the claimant quit.

2. The claimant quit because she was dissatisfied with her position and pay.

3. During the claimant's interview with the manufacturing manager ("manager"), and human resource representative the claimant was told she was being hired to work regularly on the second shift, but during training, the claimant would work first shift.

4. On or about September 29, 2009, the manager told the claimant that he was not going to place her on the second shift and he was going to leave her working on the first shift. The claimant did not ask the manager and he did not give the claimant a reason for why he was leaving her on the first shift.

5. The claimant did not speak to human resources about the change in her shift schedule because she believed the manager made the schedule. The claimant accepted the job to work second shift because she wanted to attend school during the day.

6. After negotiations with the employer and human resources, the claimant was offered $13.50 an hour to work on the second shift and $12.50 an hour to work on the first shift while training.

7. On or about September 29, 2009, the manager told the claimant her rate of pay was $12.50 an hour regardless of the shift she was working. The manager did not give the claimant a reason why her pay rate was now $12.50 an hour and not $13.50.

8. The claimant chose not to speak to the manager about her $12.50 rate of pay for an unknown reason. The claimant would not have taken the job if her rate of pay was $12.50 an hour because she negotiated $13.50 an hour for her second shift.

9. The claimant was told in her interview that there was the potential for her to be cross-trained in other areas of the company once she was fully trained.

10. On or about September 2009, the manager told the claimant that he did not want her [to] cross-train in other areas. The manager did not give the claimant a reason why he did not want her to cross-train.

11. The claimant previously worked in the quality control field and when hired, the manager told her to feel free to share procedures used in her previous employment.

12. On or about September 29, 2009, the claimant was learning about making labels for medical devices. The claimant asked if she could make a copy of the procedure book. The claimant wanted a copy of the procedure book to ensure she would be in compliance with standardized medical device labeling.

13. The employer told the claimant she was unable to make a copy of the procedure book, but she was allowed to take notes. The employer did not permit employees to make copies of the procedure book because it is a controlled booklet that is updated often and the employer did not want employees depending upon one book without knowing of its updates.

14. The claimant was concerned when she was instructed not to make a copy of the book. The claimant believed this was not proper quality control procedure as she had learned in her previous job. The claimant believed not having a copy of the procedure book could lead to interpretation of label making and not fact. The claimant was concerned she could be held liable.

15. The claimant asked the manager if she could make a copy of the procedure book and stamp "copy" on it. The manager told her no

16. The claimant believed that the manager was restraining her chance for growth in the company because he told her he would not cross-train her and because he told her she could not photocopy the procedure book.

17. On or about October 1, 2009, the claimant told the manager she quit. The claimant told the employer she quit for a new job.

18. The claimant accepted a new position as a temporary office manager prior to quitting her job with the current employer.

19. The claimant would still have quit her job with the current employer even if she was not offered the temporary office manager position.

20. On October 19, 2009, the claimant opened a claim for unemployment benefits effective the week ending October 24, 2009. She received benefits in the amount of $8,244.00 for the weeks ending October 24, 2009 to February 20, 2010.

21. When the claimant opened her claim for benefits, she did not tell the Division of Unemployment Assistance ("DUA") she became separated from the current employer due to lack of work.

22. On May 5, 2010, the claimant was issued a redetermination denying her benefits under Section 25(e)(1) of the law. She was found to be overpaid benefits in the amount of $8,244.00 for the weeks ending October 24, 2009 to February 20, 2010 in accordance with Section 71 of the law.

23. The overpayment was not attributable to misrepresentation or error.

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)(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 . . . [or if] his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

G.L. c. 151A, § 25 (c) provides, in pertinent part, as follows:

> No work shall be deemed suitable, and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work . . . If the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

Where a claimant takes a position and subsequently resigns after a trial period because the claimant determines that the work is unsuitable, the claimant will not be disqualified from benefits. *See* Jacobsen v. Dir. of Division of Employment Security, 383 Mass. 879 (1981) (remanding for a suitability analysis under 25(c) a 25(e)(1) disqualification of benefits decision

where the claimant, who was unemployed, took a position on a trial basis and left because she found it was not suitable).

Here, the employer had promised the claimant at her interview that she could work the second shift so that she could attend college classes, she would be paid a wage of $13.50 per hour, and she would be cross-trained in other areas of the employer's manufacturing business. When the claimant began work for the employer, however, the employer informed her that she would be working only the first shift, she would be paid a wage of $12.50 per hour, and she would not be cross-trained. These changes to the claimant's remuneration, hours, and working conditions immediately following the claimant's hiring rendered the job unsuitable, and the claimant had no duty to try to preserve such unsuitable employment.

We, therefore, conclude as a matter of law that that the claimant's job with the employer was not suitable within the meaning of G.L. c. 151A, § 25 (c). Although the review examiner disqualified the claimant under G.L. c. 151A, § 25 (e)(1), the claimant is not subject to disqualification under G.L. c. 151A, § 25 (c) because the claimant resigned from her position with the employer after determining that the job was unsuitable.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending October 24, 2009, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS.
DATE OF MAILING - February 24, 2011

John A. King, Esq.
Chairman

Stephen M. Linsky, Esq.
Member

Member Sandor J. Zapolin did not participate in the 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 28, 2011

A.M./rb