

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Stephen M. Linsky, Esq.
Member
Judith M. Neumann, Esq.
Member

Issue ID: 0002 5398 89

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by JoAnn Amico, 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. We affirm the review examiner's legal conclusion but reverse the claimant's complete disqualification from receiving unemployment benefits.

The claimant resigned from her position with the employer on December 31, 2012. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 20, 2013. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 15, 2013. We accepted the claimant's application for review.

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). 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. Neither party responded. 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 before the Board is whether the review examiner's conclusion, that the claimant should be completely disqualified from receiving unemployment benefits because she quit without good cause attributable to the employer or urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant filed a claim for unemployment insurance benefits on 11/2/12.
2. The claimant worked for her sole base period employer from 5/1/02 to 10/14/12 and earned \$32,881.20 between 1/1/12 and 9/30/12.

3. The claimant was laid off from her sole base period employment.
4. The claimant worked an average of 28 to 30 hours per week as a customer care and ministry agent for the instant employer, a company that provides religious guidance, from 10/15/12 to 12/31/12.
5. The claimant was a part of a prayer team for a number of years in Massachusetts. Individuals who wanted the prayer team to pray for them would speak with the prayer team and explain why they wanted the prayer team to pray for them.
6. The claimant volunteered with the instant employer before she accepted employment with the instant employer as part of the employer's prayer ministry and spoke with the congregants who needed prayer about why they wanted the claimant to pray for them.
7. The claimant had previous experience in telephone customer service working for a flower company.
8. The claimant believed that the customer care and ministry agent position with the instant employer would involve taking telephone calls from congregants regarding product orders and requests for prayers.
9. The claimant attended the employer's training program starting 10/15/12, and she received customer service training regarding products and how to take donations, and she received training regarding prayer ministry. Mentors assisted the claimant with her training and provided feedback.
10. The claimant received no discipline during the course of her employment. The employer believed the claimant's job performance met employer expectations.
11. The claimant believed that she was not a good fit for this position. This was a general feeling she had; she could not point to any specific event or incident that occurred at work that contributed to her decision to separate from employment.
12. The claimant believed it was difficult for her to follow the employer's script requirements, as she believed that prayer was something that should be more personalized.
13. The claimant did not speak with any supervisors about her belief that she was not a good fit for the position before she resigned; she believed it would have been futile to discuss this because she believed she was not right for the position.

14. The claimant submitted a written resignation letter to the employer on 12/18/12 and indicated that she was resigning from her employment, effective 1/1/13.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether these findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, while we affirm the review examiner's legal conclusion that that the claimant voluntarily left her employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons, we reject the conclusion that the claimant should be completely disqualified from receiving unemployment benefits.

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 . . . No disqualification shall be imposed if such individual establishes . . . that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

430 CMR 4.76 provides, in pertinent part, as follows:

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under M.G.L. c. 151A, § 25(e), in any of the following circumstances:

(a) If the separation is:

1. from subsidiary, part-time work during the base period and, at the time of separation, the claimant knew or had reason to know of an impending separation from the claimant's primary or principal work; or
2. if the separation from part-time work occurs during the benefit year; or

(b) if, after the separation from subsidiary, part-time work, the claimant applies for and obtains unemployment insurance benefits on account of a non-disqualifying separation from primary or principal work that preceded the separation from part-time work.

The review examiner's findings of fact reflect that the claimant resigned from her employment because she believed that the position was not a good fit for her. General and subjective dissatisfaction with working conditions does not provide good cause to quit, within the meaning of G. L. c.151A, § 25(e)(1). Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979). There is no evidence in the record that the position was unsuitable for the claimant, as she had prior experience with individualized religious work and with telephone customer service. There is also no evidence that the employer acted unreasonably or was otherwise responsible for the claimant's separation, nor was there any evidence of an external factor that compelled the claimant to resign. Thus the review examiner's conclusion that the claimant voluntarily left her employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons is supported by substantial and credible evidence and free from any error of law.

However, the claimant should not be completely disqualified from receiving unemployment benefits. The review examiner's findings of fact reflect that the claimant obtained this part-time employment during her benefit year after she had been laid off from her sole base period employer. The effective date of the claimant's unemployment claim was October 14, 2012, and she started working part-time for this employer on October 15, 2012. 430 CMR 4.76 provides that a constructive deduction applies if the disqualifying separation from part-time work occurred during the benefit year, which is what occurred here.

We, therefore, conclude as a matter of law that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e)(1). The claimant is subject to a constructive deduction, rather than complete disqualification, pursuant to 430 CMR 4.76(1).

The review examiner's decision is modified. The claimant is entitled to benefits for the week ending January 19, 2013 and for subsequent weeks if otherwise eligible, but she is subject to a constructive deduction. The claimant worked a total of 11 weeks for the employer, with average weekly earnings of \$208.81. The claimant is thus subject to a constructive deduction of \$208.81.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 16, 2014



Judith M. Neumann, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

AM/rh