

**Board of Review  
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**Issue ID: 0002 4383 77**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by Sandor Zapolin, 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, and reverse.

The claimant was collecting unemployment benefits when she accepted a new part-time job on May 30, 2012. She subsequently separated from the new position with the employer on July 7, 2012. She continued to claim unemployment benefits and was initially approved in a determination issued on January 31, 2013. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner reversed the agency's initial determination and denied benefits in a decision rendered on May 31, 2013. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant left employment for reasons that were disqualifying, 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. Only the claimant responded. Our decision is based upon our review of the entire record.

The issue on appeal is whether the claimant should be disqualified, where she accepted work that she knew was unsuitable because of its work hours, hoping that the hours would change, and quit after three days when it became clear that suitable hours would not become available.

## Findings of Fact

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

1. The Claimant was employed as a part-time, temporary Maintenance Tech for the Employer, a rental car company, from May 30, 2012 until July 7, 2012. The Claimant only appeared for work on one day, May 30, 2012.
2. The Claimant indicated during the hiring process that she could work the 2:30 p.m.-11:00 p.m. shift. The Employer did not have any openings for any other shifts.
3. The Claimant was informed at hire that she was to work the 2:30 p.m-11 p.m. shift.
4. The Claimant reported to work the first day, May 30, 2012, for training in the morning.
5. The Claimant did not appear on the second day, May 31, 2012, because her daughter was sick.
6. The Claimant did not appear on the third day, June 1, 2012, because she was unsure how to handle her scheduling issue.
7. The Claimant's daughter went to day care which is only open during daytime hours.
8. The Claimant had no other relatives available to provide child care at night.
9. The Claimant's daughter's father was not willing to provide child care.
10. The Claimant did not tell the Employer that she could not work the required hours during the hiring process because the Claimant was desperate for a job after a long period of unemployment.
11. On May 30, 2012, the Claimant quit by job abandonment.
12. The Employer removed the Claimant as an employee from its system on July 7, 2012, after a conversation between the Employer's manager and the Claimant.

## Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine (1) whether the findings of fact are supported by substantial evidence and (2) whether the ultimate conclusion that claimant is disqualified from benefits is free from error of law. In this case, we

adopt the review examiner's findings of fact, as they are supported by substantial evidence. However, we conclude that those facts do not disqualify the claimant from benefits.

We agree with the review examiner that claimant quit her employment and hence her separation is governed by G.L. c. 151A, § 25(e) and (e)(1), which provide, in pertinent part:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for ... [T]he 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 ... An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

The review examiner denied benefits under G.L. c. 151A, § 25(e)(1), concluding that the claimant accepted this job even though she knew the hours were incompatible with her child-care needs and then left the job without making preservation efforts. We agree with the first of these observations but not the second. Under the particular circumstances of this case, the claimant is entitled to benefits.

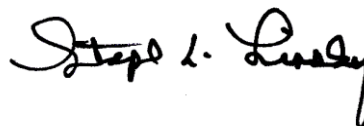
Here, the record reflects that the claimant had sought work unsuccessfully for some period of time and was, in her words, "desperate for a job after a long period of unemployment." (Finding #10). She accepted this job hoping that, once she began the training period, she would be in a position to obtain day-time work hours that were compatible with her child-care needs. After only one day on the job, it became clear to her that such would not occur. The record also reveals that, prior to the employer terminating the claimant's employment for job abandonment, the claimant had a conversation with the employer in which she sought better hours but the employer declined.<sup>1</sup> Under these circumstances, the claimant's separation is rendered involuntary. Norfolk County Retirement System v. Dir. of Division of Employment Security, 66 Mass App. Ct. 759, 762 (2006)(claimant who resigned, because she was unable to obtain child care and because the employer had no alternative shifts available, did so involuntarily due to urgent, compelling, and necessitous reasons). The claimant is, therefore, entitled to benefits under G.L. c. 151A, § 25(e)(1).

We, therefore, conclude as a matter of law that the claimant is not disqualified from receiving benefits under G.L. c. 151A, § 25(e)(1). To the extent that benefit charges are applicable, they shall not be charged to the employer's account but shall be charged to the solvency account, pursuant to G.L. c. 151A, § 14(d).

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<sup>1</sup> We have supplemented the findings of fact, as necessary, with unchallenged evidence before the review examiner that is consistent with his findings of fact. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Dept. of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending July 14, 2012, and for subsequent weeks if otherwise eligible.



Stephen M. Linsky, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – December 3, 2013**



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.

LH/rh