86 Mass.App.Ct. 1121

Unpublished Disposition

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER.

NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel’s decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

Appeals Court of Massachusetts.

Thomas F. **FRAZIER**

v.

DIRECTOR OF the [DEPARTMENT OF UNEMPLOYMENT ASSISTANCE](http://www.westlaw.com/Search/Results.html?query=advanced%3a+OAID(5025719132)&saveJuris=False&contentType=BUSINESS-INVESTIGATOR&startIndex=1&contextData=(sc.Default)&categoryPageUrl=Home%2fCompanyInvestigator&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem) & another.[1](#co_footnote_B00112034839470_1)

No. 13–P–336. | November 21, 2014.

By the Court (KANTROWITZ, VUONO & [SULLIVAN](http://www.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0153247601&originatingDoc=Ic1a6220973cc11e4b86bd602cb8781fa&refType=RQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)), JJ.[2](#co_footnote_B00222034839470_1)).

***MEMORANDUM AND ORDER PURSUANT TO RULE 1:28***

**\*1** The plaintiff, Thomas F. **Frazier**, appeals from a judgment of the District Court affirming the decision of the board of review of the Executive Office of Labor and Workforce Development (board) denying his claim for unemployment benefits. We affirm.

*Background.* We summarize the facts found by the review examiner and adopted by the board.[3](#co_footnote_B00332034839470_1) **Frazier** was employed as a part-time salesman for the Murray and MacDonald Insurance Services, Inc. (MMISI), from June 24, 2009, to November 27, 2009, when he resigned. At the time **Frazier** began working for MMISI, he was employed full-time by a different employer. However, he was laid off from that job on July 1, 2009,[4](#co_footnote_B00442034839470_1) and began collecting unemployment benefits. **Frazier** signed an employment agreement with MMISI and was paid a weekly salary of $196 plus commissions on his sales. (The $196 weekly salary was the maximum **Frazier** could earn without affecting his unemployment benefits from his prior job). MMISI invested $15,000 in **Frazier’s** training and support services with the expectation that **Frazier** would transition to being a regular full-time employee.

On November 15, 2009, **Frazier** met with the president of MMISI and expressed frustration with his compensation package. In response, the president sent **Frazier** several “sample” offers of full-time employment should he successfully transition from a part-time to a full-time producer. The sample offers were intended only for **Frazier’s** review; MMISI did not extend an offer of regular full-time employment nor did MMISI tell **Frazier** that he could no longer work on a part-time basis. After considering this information, **Frazier** resigned. He then filed for the unemployment benefits that are the subject of this appeal.

The review examiner also made several express credibility assessments and found generally that MMISI’s testimony was more credible than that of **Frazier**. Specifically, the examiner found **Frazier’s** testimony that he was never given any employment agreement at the time he was hired was not credible in light of the copy of the agreement signed by him, which indicated he was a full-time employee.[5](#co_footnote_B00552034839470_1) In addition, the review examiner found not credible, in light of the documentation submitted by the employer, **Frazier’s** assertion that the employer gave him an ultimatum to work full-time or leave, nor did he credit **Frazier’s** testimony concerning the details of the offers made by the employer.

On the basis of these findings, which the board deemed to be supported by substantial and credible evidence, the board concluded that the employer had not changed the terms of **Frazier’s** employment or his compensation package. Consequently, the board determined that **Frazier** failed to establish that he voluntarily left his employment for good cause attributable to his employer within the meaning of [G.L. c. 151A, § 25(*e* )(1)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST151AS25&originatingDoc=Ic1a6220973cc11e4b86bd602cb8781fa&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). As noted, the board’s decision was affirmed by a judge of the District Court.

*Discussion.* Generally, an employee who leaves work voluntarily is not entitled to unemployment benefits. [G.L. c. 151A, § 25(*e* )(1)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST151AS25&originatingDoc=Ic1a6220973cc11e4b86bd602cb8781fa&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). This rule is subject to a narrow exception: an employee who leaves voluntarily may nonetheless be entitled to unemployment benefits if he “establishes by substantial and credible evidence that he had good cause for leaving attributable to” the employer. *Ibid.,* as amended by St.1992, c. 26, § 19.

**\*2** Here, the review examiner’s finding that **Frazier** quit his job because he was dissatisfied with his salary, and not because there had been any change in the terms of his employment, is amply supported by substantial evidence. We therefore agree with the board’s reasoning that **Frazier** had not met his burden. Furthermore, contrary to **Frazier’s** assertions, the board was not required to credit evidence provided by him that, if believed, might support an opposite conclusion.[6](#co_footnote_B00662034839470_1) See [*Boston v. Downing,* 73 Mass.App.Ct. 78, 83 (2008)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2017380233&pubNum=0000523&fi=co_pp_sp_523_83&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_523_83) (court will not displace agency’s choice between two conflicting views of the evidence). See also [*Fisch v. Board of Registration in Med.,* 437 Mass. 128, 138 (2002)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2002365851&pubNum=0000521&fi=co_pp_sp_521_138&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_521_138) (it is the agency’s role, not the court’s, to weigh the credibility of witnesses).

In sum, like the District Court judge, we agree with the reasoning of the board in all respects and see no basis for disturbing its decision.

*Judgment affirmed.*

**Parallel Citations**

2014 WL 6606583 (Table)

|  |
| --- |
|  Footnotes |
| [1](#co_footnoteReference_B00112034839470_ID0) | Murray and MacDonald Insurance Services, Inc. |
| [2](#co_footnoteReference_B00222034839470_ID0) | Panel members appear in order of seniority. |
| [3](#co_footnoteReference_B00332034839470_ID0) | The review examiner initially ruled, after a hearing attended only by **Frazier**, that he was entitled to unemployment benefits. MMISI appealed, and the board remanded the matter to the review examiner to give MMISI an opportunity to present testimony and other evidence. The examiner then issued findings of fact and credibility assessments. **Frazier** raises no issue concerning this procedure. |
| [4](#co_footnoteReference_B00442034839470_ID0) | As it turns out, the date in this finding is incorrect, as is the finding in the previous sentence that **Frazier** worked the two jobs simultaneously, but nothing turns on the errors. |
| [5](#co_footnoteReference_B00552034839470_ID0) | The hearing examiner found that **Frazier** made his own hours and often worked full-time. His base pay did not vary with the hours worked. |
| [6](#co_footnoteReference_B00662034839470_ID0) | **Frazier** identifies only two findings that are without support in the record, see note 3, *supra.* Those two findings concern the timing of **Frazier’s** departure from his prior job and are essentially irrelevant to the issues raised in this appeal. |

|  |  |
| --- | --- |
|  **End of Document** | © 2014 Thomson Reuters. No claim to original U.S. Government Works. |