

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF UNEMPLOYMENT ASSISTANCE
BOARD OF REVIEW
Government Center
19 Staniford Street
Boston, MA 02114

Tel. (617) 626-6400
Office Hours:
8:45 a.m. to 5:00 p.m.

DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number: **BR-99136**

On March 13, 2006, in Boston, Massachusetts, the Board reviewed the written record a recording of the testimony presented at the hearing held by the Commissioner's representative on October 26, 2005.

On December 23, 2005, the Board allowed the claimant's application for review of the Commissioner's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Unemployment Insurance Law (the Law). The Board remanded the case to the Commissioner for further review and to make further findings of fact from the record. The Commissioner returned the case to the Board on January 6, 2006.

The Board has reviewed the entire case to determine whether the Commissioner's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The appeal of the claimant is from a decision of the Commissioner which concluded:

The claimant was not discharged by the employer. Therefore, Section 25(e)(2) of the Law does not apply in this case.

In accordance with Section 25(e)(1) of the Law, the burden is upon the claimant to establish by substantial and credible evidence that he left work voluntarily with good cause attributable to the employer or its agent, or involuntarily for urgent, compelling and necessitous reasons.

There is nothing in the record to support the conclusion that the claimant left work involuntarily for urgent, compelling and necessitous reasons within the meaning of the Law.

there is no substantial and credible evidence that the claimant left work involuntarily for urgent compelling and necessitous reasons.

Since the claimant did not establish that he left work involuntarily for urgent, compelling and necessitous reasons, the question then becomes whether the claimant left work voluntarily for good cause attributable to the employer or its

There is no evidence in the record to support the conclusion that the claimant left work voluntarily for good cause attributable to the employer or its agent. Rather, the claimant made a personal decision not to pursue obtaining another work assignment from the employer after completing his initial assignment on July 29, 2005. The claimant knew that he was required to contact the employer after the completion of his assignment if he was available to take on another assignment, since he had received the employer's personnel policies when he began employment.

The claimant's testimony that he had never had any contact with the employer, that he thought the client was his employer, and that he did not know that he was supposed to call anyone at the completion of his assignment, is not credible since the claimant had completed the employer's application to get his job, since he had received the employer's personnel policies and contact information when he began employment, since the claimant submitted his time sheets to the employer every week in order to get paid, and since his weekly paycheck and pay-stub clearly showed that the employer, not the client, was paying him.

Therefore, there is no substantial and credible evidence that the claimant left work voluntarily for good cause attributable to the employer or its agent.

Accordingly, the claimant is subject to disqualification and is denied benefits.

The claimant is denied benefits for the week ending August 6, 2005, and until he has worked eight weeks and in each week has earned an amount equal to or in excess of his weekly benefit amount.

Section 25 of Chapter ISIA of the General Laws and 430 Code Mass. Regs. § 4.04, are pertinent and provide, in part, as follows:

Section 25. No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for--

(e) For the period of unemployment next ensuing and until the individual has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the individual's weekly benefit amount 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, (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence,

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quit unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

For the purposes of this paragraph, "temporary help firm" shall mean a firm that has one or more employees and assigns them to clients to support or supplement the client's workforce in work situations such as ~~workloads and special~~ ^{skill} ~~nts and projects.~~ ^{nts and projects.} "Temporary help firm" shall mean an enterprise that employs one or more employees and assigns them to clients to support or supplement the client's workforce in work situations such as ~~workloads and special~~ ^{skill} ~~nts and projects.~~ ^{nts and projects.} "Temporary help firm" shall mean an enterprise that employs one or more employees and assigns them to clients to support or supplement the client's workforce in work situations such as ~~workloads and special~~ ^{skill} ~~nts and projects.~~ ^{nts and projects.}

The following words and phrases shall have the following meanings:

Temporary Employee means an employee assigned to work for the clients of a temporary help firm.

1. the claimant was employed by a temporary help firm; and
2. the temporary help firm advised the claimant in writing as provided in 430 CMR 4.04(8)(e) of the need to contact the temporary help firm for reassignment upon completion of an assignment; and
3. the temporary help firm submits information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.

1. did request another assignment; or
2. did not receive written notice from the temporary help firm of the obligation to request another assignment; or
3. had good cause, as determined by the commissioner, for failing to request another assignment.

(e) Any notice given by the temporary help firm to its temporary employees of the need to request a new assignment upon completion of their current assignment must be in writing and inform the employees of the method and manner for requesting a new assignment, such method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary help firm he/she works, and that a failure to do so may result in a new assignment being denied for the employee.

The Commissioner's [redacted] a hearing on October 26, 2005. Both [redacted] appeared. The Board remanded the case to the Commissioner for further review [redacted] to make further of fact. The Commissioner's representative then issued the following consolidated fact:

- I. The claimant worked for the employer as a mail sorter from May 22, 2005, until July 29, 2005, when he was separated from employment.
 2. The claimant worked Sunday to Thursday from 10 PM to 6 AM on the following day.
 3. The claimant initiated his separation by failing to contact the employer after the completion of his assignment.
 4. The employer operated a temporary employment agency. The employer did business under the name "Personnel People."
 5. The claimant worked for the same client of the employer throughout his employment. The client was a bank.
 6. The claimant heard about the job with the bank through a friend. The friend already worked as a mail sorter at the bank. The friend told the claimant that it was a permanent position. The friend gave the claimant an application for the job. The application was headed "Personnel People" and "Personnel People" was referenced several times in the application. The friend also gave the claimant a tri-fold sheet containing the employer's personnel policies.
 7. On May 15, 2005, the claimant completed and returned the employer's employment application to his friend. The friend told the claimant that he would submit the application to the employer for the claimant.
 8. The claimant was hired for the bank position without having any contact with the employer, other than receiving its application and tri-fold and submitting its application via his friend.
 9. The employer's tri-fold which the claimant's friend had given him included the name under which the employer did business, the employer's address and phone numbers, and the names of the employer's president, office manager, administrative assistant, and personnel coordinator.
 10. Among other personnel policies, the tri-fold referenced twice to its "Completion of Assignment" policy. The first reference in the tri-fold stated in full: "After completion of your assignment, it is your responsibility to contact us for reassignment. If you fail to do so, you will be deemed to have voluntarily resigned."
 - II. The second reference to the "Completion of Assignment" policy in the tri-fold stated in full: "Effective January 1, 2004, Massachusetts Unemployment requirements changed. It is now the employee's "temp's" responsibility to contact Personnel People after completing an assignment. This will let us know that you are available for another assignment and help get you back to work. Your failure to contact Personnel People must be reported to DUA (Division of Unemployment Assistance). DUA will contact you to review your employment status and determine if benefit payments should continue."
 12. The claimant had no direct communication with the employer throughout his employment. The claimant never told his office, and the claimant never told the claimant at the bank.
 13. When at work, the claimant took direction from the bank through an agent. The claimant received his direction at the bank.
- The claimant did not receive written notice to the claimant of the method of termination for failure to follow the claimant's instructions.

15. The employer did not provide written notice to the claimant that specifically advised him that failure to request a new assignment may affect his eligibility for unemployment compensation, except for what is quoted above from the tri-fold,
16. The claimant received a weekly paycheck and pay-stub that contained both the employer's legal name and "dba" name and the employer's address.
17. On July 29, 2005, the employer's client to whom the claimant was assigned informed the employer that it would no longer need the mail sorters provided by the employer because the client had lost a big account. About nine mail sorters, including the claimant, were affected by this decision. The employer tried to contact all the mail sorters that day by phone to tell them that their current assignment was ending that day. The employer was unable to reach some of the mail sorters, including the claimant. The employer did not have any other work to offer these employees at that time.
18. The claimant last physically worked for the employer on July 29, 2005, when he worked his full regular shift from 10 PM on July 28 to 6 AM on July 29. Toward the end of this shift, the claimant learned from one of the client's employees that he and the other mail sorters were being let go at the end of their shift that day.
19. The claimant never tried to contact the employer on or after July 29, 2005.

After reviewing the record, the Board adopts the findings of fact made by the Commissioner's representative as being supported by substantial evidence. The Board concludes as follows:

The employer is a temporary help firm. The claimant worked for the employer as a mail sorter assigned to the employer's client, a bank. On July 29, 2005, the assignment ended. The client informed the claimant and other mail sorters that they were no longer needed. The employer did not have other work available for them.

Under G. L. c. 151A, § 25(e) of the Law cited above, a temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in _____ to contact the firm upon completion of an assignment. Under 430 Code Mass. Regs. § 4.04(8) cited above, written notice is required to inform the employee of a method and manner for requesting a new assignment that is consistent with the normal method and manner of communication between the temporary help firm and the employee. The written notice must state that the employee's failure to request a new assignment may affect his/her eligibility for unemployment compensation.

In this case, the claimant and the employer had no direct communication at the time of the claimant's hire or during his employment. The employer also failed to give the claimant written notice that failure to request a new assignment may affect his eligibility for unemployment compensation. Accordingly, the claimant did not voluntarily quit employment within the meaning of section 25(e)(1) of the Law cited above.

Since the _____ [unemployment] resulted from lack of work, the claimant is not subject to the disqualifying provisions of section 2.5(e) of the Law.

The Board modifies the Commissioner's decision, The claimant is entitled to benefits for the week ending August 6, 2005, and subsequent weeks, if otherwise eligible.



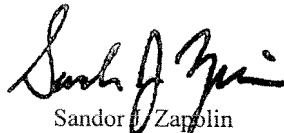
Kevin P. Foley
Chairman

BOSTON, MASSACHUSETTS

DATE OF MAILING - MAR 17 2006



Donna A. Freni
Member



Sandor J. Zapolin
Member

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

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LAST DAY - APR 18 2006