APRIL 2023

A CHANGE IN THE CONDITIONS OF HIRE CONSTITUTES AN OFFER OF NEW WORK

Background

A per diem medical assistant voluntarily resigned when her employer increased her required workdays from three (3) to ten (10) days per month. The employee had other obligations and could not meet the employer's new requirements. Although the employee was willing to commit to six (6) days per month, the employer refused to make an exception for her, so she had no choice but to leave the job. The employee made it clear that she was not leaving voluntarily, but was being forced out by the employer. Although the employer was sympathetic to the medical assistant's situation, it could not make any exceptions and accepted her resignation.

Process

The employee filed a UI claim contending that "she was out of work through no fault of her own." The DOL deputy determined that the change in her work hours were not unusual, and she did not do what was "reasonable and necessary" to preserve her job. The employee appealed the determination arguing that she was willing to work but could not because her employer had significantly changed her hours from what she had accepted when hired.

The appellant claimant appeared before an Appeal Tribunal examiner. The employer opted not to participate because it admittedly changed the medical assistant's conditions of hire and did not want to protest her eligibility for UI benefits. The claimant testified she accepted the employer's terms of 3 days a month when she was hired five years ago. The employer changed those terms due to a reorganization and would not make exceptions. The claimant was unable to work the new hours because she was committed to watching her grandchildren and taking care of her ill husband. The employer advised the claimant that if she was unable to meet the new requirement, she would have to submit her resignation. The claimant testified she resigned but would not have done so if her conditions of employment had remained the same.

Judgment

In the Appeal Tribunal's Decision, the examiner opined that substantial evidence indicated that the claimant originally accepted the job with the expectation that she would be required to work only three (3) days per month. Since the new mandate of ten (10) days per month was a substantial change, it constituted an offer of new work, which was unsuitable given the claimant's work history and her recent personal circumstances. Hence, no disqualification was imposed, and the claimant is eligible for benefits without disqualification. The employer agreed with the Decision and did not file a further appeal.

This case illustrates that when an employer makes significant changes to an employee's work schedule, it will likely be deemed an offer of new work by the NJ Department of Labor. If the work is considered suitable for the employee, but the individual has good cause for refusing the work, as the claimant did in this case, he/she is eligible for benefits.

For more information about Princeton Claims Management or unemployment insurance eligibility please contact *LuAnne Rooney Frascella at 609.936.2207 or lfrascella@njha.com*.