

**Board of Review
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Issue ID: 0002 5053 65

BOARD OF REVIEW DECISION

0002 5053 65 (Jan. 14, 2014) – Where coworker yelled at the claimant, threw papers at him, and stopped training him, the problem went beyond a personality conflict; the unprovoked behavior interfered with the claimant's work. Claimant had good cause attributable to the employer to resign after raising the issue with his supervisor, the assistant vice president, the vice president, and human resources, and the coworker's behavior did not change.

Introduction and Procedural History of this Appeal

The claimant appeals a decision by 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 resigned from his position with the employer on December 4, 2012. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 28, 2013. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on May 9, 2013.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer 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 remanded the case to the review examiner to make subsidiary findings from the record to clarify the claimant's attempts to preserve his job. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board on appeal is whether the review examiner's decision to deny benefits is supported by substantial and credible evidence and free from error of law, where the consolidated findings of fact indicate that the claimant's co-worker, who was assigned to train the claimant, yelled and threw papers at him and the claimant informed supervisor about the behavior, but the co-worker's behavior did not change before the claimant quit.

Findings of Fact

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

1. The claimant worked full-time as a pricing associate for the employer from March 12, 2012 to December 4, 2012 when the claimant quit.
2. At the beginning of the claimant's employment, the claimant informed the employer's Assistant Vice President that his co-worker who was assigned to train the claimant was a difficult personality. The Assistant Vice president replied for the claimant to stick with it.
3. In May, 2012, the co-worker refused to respond to the claimant's questions and would stop training the claimant. The claimant informed his supervisor of this, the supervisor replied for the claimant to stay motivated.
4. During the claimant's employment, the co-worker threw papers at the claimant and raised his voice at the claimant.
5. On an unknown date, the claimant's supervisor told the claimant not to let the co-worker speak to him in a raised voice.
6. The supervisor asked the co-worker to be more patient with the claimant.
7. During the week before his resignation, the claimant informed the Vice President that his relationship with the co-worker was confrontational and not productive.
8. On December 3, 2012, the claimant completed a project while the co-worker was on vacation.
9. On December 4, 2012, the co-worker returned to work and accused the claimant, in a raised voice, of not doing the processing work for the project.
10. On December 4, 2012, the claimant worked with the co-worker at the co-worker's desk for 2 to 2.5 hours.
11. On December 4, 2012, at 10am the claimant submitted a written resignation letter to the employer.
12. After the claimant submitted his resignation, the employer's Human Resources personnel called the claimant and asked the claimant whether he was having troubles with others. The claimant stated to Human Resources that he did not have any problems with the employer or management. The claimant stated that he did have a problem with a co-worker.
13. Human Resources asked the claimant if he would stay so long as he did not work with his co-worker. The claimant replied that he would.
14. Human Resources attempted to find another position within the group for the claimant by asking the Vice President whether any other position was

available for the claimant. Thereafter, the employer informed the claimant that there was no other position available.

15. The claimant quit because of a personality conflict with a co-worker.

Ruling of the Board

In accordance with our statutory obligation, we review the consolidated findings of fact made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion that the claimant is not entitled to benefits is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's consolidated findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, based on those findings, we conclude that the review examiner's decision to deny benefits was an error of law.

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 . . . [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, . . .

Under this section of the law, the claimant has the burden to show that he is entitled to benefits. The review examiner concluded that the claimant had not carried his burden. We disagree with this ultimate conclusion.

In her original decision, the review examiner first concluded that the claimant had established a valid workplace complaint against the employer. We agree. When the claimant was hired, he was assigned to work with a specific co-worker who would train him in how he should do his work. The co-worker was difficult to work with. He yelled at the claimant. He also threw papers at the claimant. In May 2012, only two months after the claimant was hired, the co-worker stopped answering the claimant's questions and stopped training him. Although the review examiner was correct to note that this was a type of personality conflict, the facts indicate that it was more than that. The co-worker's behavior was affecting how the claimant was doing his work. After the claimant submitted his resignation, the employer's efforts to find the claimant another position show that the employer saw the relationship as problematic. In light of these circumstances, the claimant had a valid workplace complaint which gave him good cause to quit his job.

In order to be eligible for benefits following his resignation, the claimant must also show that he made a reasonable attempt to correct the problem in the workplace, or that such an attempt would have been futile. See Kowalski v. Dir. of the Div. of Employment Security, 391 Mass. 1005, 1006 (1984) (rescript opinion). The review examiner originally concluded that the claimant had not made reasonable attempts to keep his job. When we remanded the case to the

review examiner, we asked specific questions regarding the claimant's preservation efforts. The consolidated findings of fact now indicate that the claimant told several people, including his supervisor, the assistant vice president, and the vice president that he was having a problem with his co-worker. In addition, when he spoke with human resources, he explained to them that he had no problem with the employer or management, but that he was having an issue with the co-worker. The claimant agreed to stay employed if the employer found him a position away from the co-worker. All of these actions suggest that the claimant wanted to remain employed and was trying to keep his job. When the co-worker's behavior did not change, and when the employer could find no alternative position for him, he acted reasonably in quitting his job. Consequently, he should be eligible for benefits.

We are aware that a resignation resulting from a so-called personality conflict is usually determined to be a disqualifying separation. Section 1224(H) of the DUA's Service Representative's Handbook provides the following:

A claimant leaves his or her work because of a personality conflict with the employer, a supervisor or a co-worker. Unless you can establish that an irreconcilable conflict that interfered with the work process existed, and that the claimant tried to resolve the matter, treat the separation as voluntary and without good cause attributable to the employer unit under §25(e)(1).

Indeed, as we noted above, the review examiner characterized the claimant's reason for leaving as attributable to a personality conflict. However, as our discussion indicates, a "personality conflict," especially between a trainer and a trainee, can become sufficiently serious or bullying to compel an employee to quit, depending upon the specific circumstances. From the specific findings of what was happening between the claimant and his co-worker here, it is clear that the conflict was instigated by the co-worker rather than the claimant, was unprovoked, was persistent and demeaning, was not being resolved, and was affecting the claimant's work. This takes it beyond a mere personality conflict.

We also note that, while general job dissatisfaction is not good cause for quitting, Sohler v. Dir. of Div. of Employment Security, 377 Mass. 785 (1979), it is clear from the examiner's Findings ## 12 and 13 that the claimant was actually quite satisfied with the job itself and his working conditions other than his intolerable co-worker/trainer, and that he would have stayed had the co-worker situation been remedied.

Thus, the claimant has carried his burden, under G.L. c. 151A, § 25(e)(1); and we conclude as a matter of law that, although the review examiner's consolidated findings of fact are supported by substantial and credible evidence, her original conclusion denying benefits was an error of law, because the findings of fact show that the claimant had a valid workplace complaint regarding his co-worker, he tried to preserve his job, and he reasonably resigned when the workplace problem was not adequately addressed.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending December 22, 2012, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 14, 2014



Paul T. Fitzgerald, Esq.
Chairman



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.

SF/rh