

**Where a claimant requested a move to a different area of the employer's business so that he would not have to work with a co-worker who had verbally abused him, and the employer complied with such a request by moving the claimant to a new suitable job, the claimant did not have good cause to quit his job.**

**Board of Review  
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**Issue ID: 0018 5150 56**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The employer appeals a decision by Eric Sullivan, a review examiner of the Department of Unemployment Assistance (DUA), to award 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 April 11, 2016. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 14, 2016. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on August 31, 2016.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was not 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 employer's appeal, we accepted the employer's application for review and remanded the case to the review examiner to allow the employer an opportunity to provide evidence. Both parties attended the remand hearing, which was conducted over the course of two days, December 7, 2016, and January 25, 2017. Thereafter, the review examiner issued his consolidated findings of fact and returned the case to the Board on February 24, 2017. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that the claimant resigned his position for good cause attributable to the employer, pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant requested a transfer to a different area of the employer's facility, the employer granted this request and moved the claimant to a different area and position with similar duties, hours, and pay, and the claimant failed to continue to report to work.

### **Findings of Fact**

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

1. The claimant worked full-time for the instant employer as a Press Room Helper for approximately 17 years until his separation on 4/11/2016.
2. The Press Room Helper position is a manual labor position. Press Room helpers do not operate machines, rather they put boxes on pallets, put on labels and assist the Machine Operators.
3. A short time prior to the claimant's separation, a co-worker complained to the employer that he could not work with a certain employee.
4. In the past, the claimant had problems with the other employee as well.
5. The other employee had called the claimant a piece of shit and bragged about it to other employees. The employee had a bad attitude and had acted aggressive towards the claimant.
6. After the complaint by the other co-worker, the employer moved the claimant to work at the same machine with the employee who had called him a piece of shit and had been aggressive with him in the past.
7. The claimant could not work with the same employee again and had his sister type a letter about the situation and presented it to the Vice-President on 3/25/2016.
8. In the letter, which is signed by the claimant, the claimant asked the employer to move him to another area of the company outside the presence of the co-worker.
9. The Vice-President agreed to change departments for the claimant placing him as a Press Room Helper in the bindery department several hundred feet away so that he did not have to work with the other employee.
10. The transfer to the bindery department included the same duties, pay and hours. The only difference is that the machine was different from the prior machine from which he had been a helper.
11. The claimant was dissatisfied with being transferred to the different department because he had hoped to work his way up as a Machine Operator in the future and wanted to continue working with the same machinery in case he had a chance to become a Machine Operator.
12. The employer had never promised the claimant a Machine Operator position during his 17 years of employment.

13. The claimant refused to report to the bindery department as a Press Room Helper and as a result, the employer suspended the claimant from 3/28/2016 through 4/3/2016 and informed him to report back to work on 4/4/2016.
14. The claimant did not report to work on 4/4/2016 and never reported back to work again.
15. On 4/11/2016, the claimant gave the Vice-President his resignation without providing a reason.
16. The claimant decided to quit his employment due to being moved to the different department since he hoped to remain in the same department in order to someday move up to the position of Machine Operator.
17. The Vice-President did not ask the claimant the reason for his resignation since the claimant had a history of walking off the job.

#### **Credibility Assessment:**

The Executive Vice President's testimony is accepted as credible in all contested [areas] since he was forthright in giving testimony and his version of the events made more sense. The claimant's testimony was evasive and changed at times causing the claimant's testimony to be less credible in all contested [areas].

#### **Ruling of the Board**

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we reject the review examiner's legal conclusion that the claimant quit his job for good cause. Therefore, we conclude that the claimant is subject to disqualification, under G.L. c. 151A, § 25(e)(1).

It is undisputed that the claimant chose to resign his position with the employer. His resignation notice is in the record as Exhibit # 4, page 2. As such, his eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), which provides, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) For the 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 law, the claimant has the burden to show that he is eligible to receive unemployment benefits. Following the initial hearing, the review examiner concluded that the claimant had carried his burden. Consequently, the review examiner awarded benefits.

The review examiner's decision, prior to the remand hearing, was based on the claimant's testimony that the employer had changed his position from machine operator to manual laborer. The review examiner concluded that the laborer position was not suitable for him, and, therefore, that the claimant had good cause to quit. We remanded this matter to obtain more evidence regarding the reasons behind the claimant's transfer to the new job as a bindery department helper. Information in the record and included within the employer's appeal suggested that the testimony given by the claimant had not given a complete or accurate portrait as to what led to the separation. *See* Exhibit # 2 and Remand Exhibit # 2.

After the remand hearing and our review of the entire record, including the consolidated findings of fact, we now conclude that the claimant is subject to disqualification, under G.L. c. 151A, § 25(e)(1). In determining whether the claimant had good cause attributable to the employer, our focus is on the employer's conduct prior to the separation from employment. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Here, the claimant has suggested and/or implied that he was transferred to a position which was unsuitable for him after he complained about having to work with a co-worker who was previously verbally abusive.

For purposes of this discussion, we acknowledge that forcing the claimant to work with someone who had called him a "piece of shit" could create a reasonable workplace complaint which, if unaddressed by the employer, could provide good cause for quitting. *See* Consolidated Finding of Fact # 5. However, good cause will only exist if the employer failed to take steps to remedy the situation. Here, the evidence demonstrates that, after the claimant complained about working with the employee and put in writing that he wanted to work in another area, *see* Exhibit # 4, page 1, the employer fulfilled the claimant's request. It transferred him away from the press room and stationed him in the bindery department. His underlying job, as a "helper," remained the same. By removing the claimant from the press room and taking the claimant away from the co-worker, the employer reasonably responded to the claimant's request and complaint.

The claimant suggests, however, that the move to the bindery department created good cause for him to resign. He essentially argues, as the review examiner initially concluded, that the bindery work was unsuitable for him. "Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of 'good cause.' *See Graves v. Dir. of Division of Employment Security*, 384 Mass. 766, 768 n. 3 (1981)." Baker v. Dir. of Division of Unemployment Assistance, No. 12-P-1141, 2013 WL 3329009 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*.

However, the evidence in the record does not support a conclusion that the bindery department work was unsuitable for the claimant. The suitability of a particular job may be assessed by examining various factors, including the experience and training of an employee and the pay rate for the work. *See* G.L. c. 151A, § 25(c). The employer offered into evidence the job duties of the claimant's original job, a press room helper, and the job duties of the new work as a bindery helper. They are substantially the same. *See* Remand Exhibit # 7. As noted by the review examiner, "[t]he only difference [between the two jobs] is that the machine was different from

the prior machine from which he had been a helper.” Consolidated Finding of Fact # 10. The hours, pay rate, and work location were the same. Based on this evidence, the claimant has not shown that the work in the bindery department was unsuitable.

We further note that the claimant offered some testimony suggesting that he did not want to go to the bindery department, because he was waiting to be promoted to a machine operator in the press room. *See* Consolidated Finding of Fact # 11. However, he was never promised a promotion. Consolidated Finding of Fact # 12. The move was also triggered by his own request that he be transferred to a different area of the employer’s business.<sup>1</sup> The employer’s decision to move the claimant to the bindery department, after the claimant requested such a move, does not rise to the level of good cause contemplated by G.L. c. 151A, § 25(e)(1).

We, therefore, conclude as a matter of law that the review examiner’s conclusion awarding benefits, under G.L. c. 151A, § 25(e)(1), is not supported by substantial and credible evidence or free from error of law, because the employer’s decision to transfer the claimant to a suitable position did not create good cause for the claimant to quit, where the claimant had requested a move to a different area, and the employer complied with that request.

The review examiner’s decision is reversed. The claimant is denied benefits for the week beginning April 10, 2016, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 16, 2017**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT  
COURT OR TO THE BOSTON MUNICIPAL 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.

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<sup>1</sup> The claimant argued during the remand hearing that his written request was misinterpreted. He did not want to go to a different department; he only did not want to work with the offensive employee in the press room. Clearly, the review examiner did not find this explanation credible. Based on the information in the record, the review examiner’s findings about the transfer request are supported.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

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