

0018 6461 03 (Jan. 31, 2017) – Under State Street, the claimant was eligible for benefits under G.L. c. 151A, § 25(e)(1), when he accepted a VSP and resigned. Circumstances indicated that his job function was being moved to Ireland, he was not included with a new IT restructuring, and the employer did not make any information available to the claimant from which he could assess the likelihood that his own position would be eliminated.

**Board of Review**  
**19 Staniford St., 4<sup>th</sup> Floor**  
**Boston, MA 02114**  
**Phone: 617-626-6400**  
**Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.**  
**Chairman**  
**Judith M. Neumann, Esq.**  
**Member**  
**Charlene A. Stawicki, Esq.**  
**Member**

**Issue ID: 0018 6461 03**

## **BOARD OF REVIEW DECISION**

### **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 March 31, 2016. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 28, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on September 2, 2016. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons 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 obtain additional evidence pertaining to what the employer communicated about potential layoffs and any circumstances that may have led the claimant to believe his job was in jeopardy. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's original conclusion that the claimant was ineligible for benefits under G.L. c. 151A, § 25(e)(1), because his resignation was not based upon a reasonable belief of imminent layoff, is supported by substantial and credible evidence and is free from error of law.

### **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 Senior Solutions Architect from 8/23/1993 until his separation on 3/31/2016.
2. During the first week of September 2015, the employer offered a voluntary separation package to thousands of employees with a voluntary layoff date of 3/31/2016. It was offered to employee[s] with at least five years of service.
3. The employer provided the claimant a list of employee[s] in various positions which indicated their age and whether they were eligible for the voluntary separation package. The claimant was not informed of any specific job categories being included in the package.
4. The claimant [was] informed of the various job titles on the list provided by the employer however his title was not located on the list.
5. The claimant was aware through speaking with other employees that all other employees in his position with 5 years' experience [were] offered the voluntary separation package.
6. The employer offered the package as a cost reduction measure.
7. All employees were provided an 11 week deadline to accept or reject the package.
8. Employees were informed that if not enough employees accept the voluntary separation package, then there could be possible layoffs in the future.
9. In exchange for resigning employment, the employee would receive a lump sum severance payment based on their positions and total years of service.
10. The employer did not inform the claimant as to what positions it intended and/or what other criteria it would use to select employees for layoff if they did not meet the threshold number of voluntary separations.
11. The claimant did not ask such information because he did not know who to ask since his immediate supervisor did not understand [sic] separation process.
12. The employer never informed the claimant of the employer's goals as to how many employees they needed to reduce in its overall workforce and/or in the claimant's job title in order to avoid layoffs.
13. The claimant did not ask for such information because he did not think he needed to know the employer's future goals.

14. The employer never informed the claimant that his employment was in jeopardy if he did not accept the voluntary separation package.
15. The employer did not communicate with the claimant about the possibility of future layoffs and the likelihood that he would be laid off if he did not accept the package.
16. The claimant did not ask the employer about the possibility of future layoffs and the likelihood that he would be laid off if he did not accept the package
17. During his last nine years of employment, the employer had been shifting architect position overseas to the employer's headquarters in Ireland. All new positions for architects were only being hired for the employer's Ireland location.
18. The claimant was never informed by the employer that his position was in jeopardy of being relocated to Ireland. The claimant did not believe that his position was being relocated to Ireland.
19. The claimant was unaware of if the employer had plans to relocate employees to Ireland or elsewhere.
20. The employer did not provide the claimant [with] any details about the extent to which the voluntary separation package was achieving its goals or about how many accepted the package.
21. The claimant was not informed by the employer who would be relocated or who would be laid off.
22. The claimant assumed that his role would change in the future and decided to accept the voluntary separation package. The claimant accepted the voluntary separation package in mid-September 2015.
23. The employer had [the] decision to decline or accept the employees who applied for the voluntary separation package and made the decision to accept the claimant's application.
24. The claimant continued working for the employer, last working on 3/31/2016, as indicated by the voluntary separation package.

### 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. We reject the portions of Consolidated Findings ## 11, 13, and 16, which suggest that the claimant did not ask the employer about information

pertaining to the positions it intended to eliminate, because they are misleading and unsupported by the record, as explained more fully below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we believe the claimant is eligible for benefits because he had good cause attributable to the employer to accept the voluntary separation package (VSP).

Since the claimant resigned from his employment, this case is properly analyzed pursuant to G.L. c. 151A, § 25(e), which provides, in relevant 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under this section of the law, the claimant has the burden to show that he is entitled to benefits. Where a claimant leaves his employment in order to accept a VSP, as here, the Massachusetts appellate courts have recognized two situations where the claimant will be entitled to benefits.

The first situation involves what the courts have characterized as an “involuntary departure.” It is an “involuntary departure” if the claimant can show that the VSP was accepted under a reasonable belief that he would soon be terminated if the employer’s offer were not accepted. White v. Dir. of Division of Employment Security, 382 Mass. 596, 597-598 (1981). In White, the employer had offered an early retirement incentive. The claimant heard a rumor there would be layoffs if the employer’s work force was not reduced by early retirements. Because of his low seniority, the claimant believed he would be laid-off and so he accepted the early retirement incentive. Id. at 597. The Massachusetts Supreme Judicial Court (SJC) remanded the case back to the DUA for further findings. In so doing, the SJC stated that, if the claimant reasonably believed his layoff was imminent, “a finding was required that the claimant did not leave his employment voluntarily.” Id. at 598–599.

The second situation is characterized as a “voluntary departure.” A claimant who accepts a VSP has left his employment voluntarily for good cause attributable to the employer, if the claimant reasonably feared he might be terminated, and the employer “substantially hindered the ability of [the] employee to make a realistic assessment of the likelihood that he would be involuntarily separated” if he did not accept the offer. State Street Bank and Trust Co. v. Deputy Dir. of Department of Employment and Training, 66 Mass. App. Ct. 1, 11 (2006). In State Street, the employer announced a plan to reduce its workforce by 1,800 employees. This reduction was to be achieved in two phases: first a VSP and then an involuntary layoff. The employer did not provide information to its employees about when and who would be laid-off during phase two. The Massachusetts Appeals Court held that by withholding information, the employer gave the claimants “good cause to adopt the mitigating strategy of accepting the VSP and leaving.” Id. at 12.

The principles set forth under White and State Street have been applied in numerous subsequent court<sup>1</sup> and Board of Review decisions<sup>2</sup>. Our consideration of these VSP cases leads us to identify two situations in which a claimant will be eligible for benefits: where the employer offering the VSP has announced that the incentive could be followed by involuntary layoffs if there are insufficient volunteers, or the circumstances surrounding the VSP offer indicate such layoffs are likely, and (1) the claimant has demonstrated a reasonable basis for believing he or she was in danger of imminent termination if he or she did not accept the VSP, or (2) the circumstances gave the claimant a rational basis for suspecting his or her job might be in jeopardy, and the employer hindered the claimant's ability to realistically assess the likelihood of this happening if he or she did not accept the VSP. In the present appeal, the claimant's situation falls into the second category, and he is entitled to benefits.

The employer announced that if not enough employees took the VSP, there could be layoffs. Consolidated Finding # 8. As for the claimant's individual position, the record shows that the employer had been shifting solutions architect work to Ireland over the last nine years, as well as posting all new solutions architect positions in Ireland. Consolidated Finding # 17. Although not in the findings, the claimant also offered undisputed testimony that, within a week of the VSP offer, the employer's parent corporation had restructured its information technology by placing employees into categories, and the claimant was not included with the architect group.<sup>3</sup> With the employer's announcement, the phasing out of the claimant's job function overseas, and his not being included in the restructuring plans, we are satisfied that the claimant has a rational basis for suspecting his future in the company might be in jeopardy.

In this case, we also have an employer that did not provide the claimant with enough information to realistically assess the likelihood of his job being eliminated. The list attached to the employer's VSP offer did not include employee names or the claimant's specific job title. *See* Consolidated Findings ## 3 and 4; *see also* Remand Exhibit 8, exhibit A. Nor did the employer communicate the threshold number of volunteers it needed to avoid involuntary terminations, the criteria it would use to lay off, what positions would be targeted for layoff, which employees would be relocated or terminated, or how many were accepting the VSP package. *See* Consolidated Findings ## 10, 12, 20, and 21. When the claimant tried to get more information from his supervisor, he found the supervisor equally in the dark. *See* Consolidated Finding #11.<sup>4</sup>

---

<sup>1</sup> *See, e.g., Connelly v. Dir. of Division of Unemployment Assistance*, 460 Mass. 24 (2011) (Board of Review correctly applied the good cause analysis under State Street in denying benefits to a claimant who accepted a VSP in part for personal reasons and did not believe her job was in jeopardy); and Curtis v. Comm'r of Division of Unemployment Assistance, 68 Mass. App. Ct. 516 (2007) (where employer announced reduction in force and instructed managers not to give individual employees information, held claimants entitled to benefits under the good cause standard set forth under State Street).

<sup>2</sup> *See, e.g.,* Board of Review Decision 0015 4276 73 (May 10, 2016) (applying White, denied benefits where claimant failed to establish that she accepted the VSP based upon a reasonable belief that she would soon be terminated or transferred to an unsuitable position); and Board of Review Decision 0002 4043 89 (Oct. 8, 2013) (applying State Street, awarded benefits to claimant who reasonably believed she would be separated and the employer hindered her ability to make a realistic assessment). Board of Review Decision 0002 4043 89 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

<sup>3</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

<sup>4</sup> We reject the portions of Consolidated Findings ## 11, 13, and 16, which suggest that the claimant did not ask the employer for more information about the positions it intended to eliminate. The claimant testified that he asked his

The claimant was left to speculate. Under State Street, this constituted good cause attributable to the employer to accept the VSP package and leave his employment.

We, therefore, conclude as a matter of law that the claimant voluntarily separated from employment with good cause attributable to the employer, pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period beginning March 31, 2016, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 31, 2017**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member



Charlene A. Stawicki, Esq.  
Member

**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.

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.

AB/rh

---

immediate supervisor about the list attached to the VSP offer, but the supervisor told him that he did not understand the separation process or what the list meant. This portion of the claimant's testimony is also part of the unchallenged evidence before the review examiner.