

Claimant hotel front desk manager resigned for good cause attributable to the employer where the hotel was chronically understaffed, the claimant was asked to work well beyond his job descriptions and well beyond his normal work hours, the job stress took a toll on his health, his therapist recommended that he resign, and the employer failed to respond to his requests for relief.

**Board of Review
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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rachel Zwetchkenbaum, 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 May 26, 2016. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued June 30, 2016. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on July 28, 2017. 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 provide the claimant with an opportunity to present evidence. Both parties attended the two remand hearings. Thereafter, the review examiner issued her consolidated findings of fact and returned the case to the Board on October 27, 2016. The Board then reviewed the record of the remand hearings, as well as the documentation presented, and remanded the case again on December 14, 2016, this time for the review examiner to make subsidiary findings of fact from the record regarding the reasons for the claimant's resignation. After rendering another set of consolidated findings of fact, the review examiner returned the case to the Board on January 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 did not have good cause attributable to the employer, or urgent, compelling and necessitous reasons for resigning from his employment is supported by substantial evidence and free from error of law,

where the consolidated findings after remand indicate that the claimant resigned because his working conditions were stressful and unsafe.

Findings of Fact

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

1. The claimant worked as a Front Desk Manager, for the employer, a Hotel, from February 11, 2014 until May 26, 2016, when he was separated from his employment.
2. The claimant worked a full-time schedule of hours.
3. The claimant was almost always scheduled to work day shifts.
4. During the claimant's tenure with the employer, the claimant felt that he was not properly appreciated and did not like the fact that he was rarely told "thank you" by the employer.
5. During the 2015 year, the claimant worked over forty overnight shifts.
6. Working overnight shifts caused the claimant a lot of stress because he felt that the hotel was located in an unsafe area.
7. When the claimant worked overnight shifts, he often saw different illegal activities going on around him and would sometimes call the police. These illegal activities included people doing drugs and sex trafficking.
8. The claimant requested a transfer, but his request was denied.
9. The claimant complained to the employer about inadequate staffing. The inadequate staffing caused the claimant to need to work additional hours.
10. The inadequate staffing continued after the claimant complained to the employer about it.
11. The claimant was forced to take on work for which he was not originally hired, including shuttle bus driver, vacuuming, cleaning carpet, and cleaning bathrooms. The claimant was forced to take on this work due to housekeeping staff shortages.
12. The claimant also worked security after a shooting at the hotel.
13. The claimant complained to the employer regarding inadequate security because there was frequent illegal and criminal activity going on around the hotel which often resulted in the claimant having to call the police.

14. Due to staffing shortages, the employer was unable to adequately address the claimant's concerns.
15. The claimant expressed fear for his safety and told the employer that they needed twenty-four hour security, instead of security only at night. The claimant also told the employer that they needed two security personnel at night instead of one.
16. The claimant complained to the employer that he was made to work seven days per week, but was only paid for five days of work because he was a salaried employee. The claimant believed that the employer did not hire hourly employees anymore so that the employer could save money.
17. In September 2015, the claimant went on medication for depression.
18. The claimant was scheduled to work an overnight shift on February 14, 2016 due to a staffing issue. The claimant knew he was scheduled to work overnight on February 14, 2016.
19. On February 5, 2016, the claimant gave human resources a letter from his doctor, stating that for health reasons, the claimant should not be scheduled to work overnight shifts.
20. The employer followed the doctor's recommendations and took the claimant off the overnight shift on February 14, 2016.
21. The employer told the claimant that he would no longer ever be required to work overnight shifts.
22. On February 27, 2016, the claimant was given a warning for work performance. The claimant was read the warning. The claimant told the employer that he would not read the warning and that he did not want to see it either.
23. The Director of Front Office sent the claimant an e-mail on April 11, 2016. The claimant never replied to the e-mail.
24. When the May 2016 schedule came out, the claimant realized that he had been scheduled to work an overnight shift on May 26, 2016.
25. On May 3, 2016, the claimant's therapist recommended to the claimant that he leave his job due to stress and the effect it was having on his health.
26. The General Manager sent the claimant an e-mail on May 5, 2016 and May 6, 2016. The claimant did not reply to either e-mail.

27. On Tuesday May 10, 2016, the claimant was told by his supervisor that the General Manager was very upset that he had not replied to his e-mails and that there would be a meeting on Thursday May 12, 2016. The claimant became very upset at this news.
28. The claimant expressed how upset being at work was making him to his family.
29. The claimant's family told the claimant that he was too unhappy working his current job and that they all wanted him to quit.
30. The claimant decided to take his family's advice.
31. The claimant worked on May 12, 2016.
32. On May 12, 2016, the claimant was asked to meet with the employer.
33. The employer planned on issuing the claimant a written warning.
34. During the meeting, the employer informed the claimant that there were concerns about his failing to reply to management e-mails, follow-up with customer service, and issues with his communication skills.
35. The employer went to get the written warning, but was interrupted by the claimant. The claimant said he would be right back. The claimant left the room and returned soon after with his own piece of paper.
36. The claimant handed the paper to the employer. The paper was a pre-written resignation letter. The letter stated that he was resigning, effective May 26, 2016.
37. The claimant also told the employer that he was not accepting the employer's documentation.
38. The claimant did not give a reason for his resignation.
39. The claimant's last day of work was on May 26, 2016.
40. Had the claimant not resigned he could have continued to work for the employer.
41. The claimant resigned from his job due to stress, the effect on his health and a fear for his safety.
42. The claimant filed for unemployment benefits and received an effective date of May 29, 2016.

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. However, as discussed more fully below, we conclude, contrary to the review examiner, that the claimant had good cause attributable to the employer when he resigned from his job.

Since the claimant quit his job, his qualification for benefits is governed by the following portions of G.L. c. 151A, § 25(e):

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 the foregoing provision, the claimant has the burden to prove that he is eligible for benefits. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

While general and subjective dissatisfaction would not provide good cause to leave one's employment, Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979), it is well-recognized that employees are not required to tolerate jobs that present them with unsafe or unhealthy working conditions. See Carney Hospital v. Dir. of Division of Employment Security, 382 Mass. 691 (1981) (rescript opinion). If these conditions persist even after the employee has sought redress, an employee may leave that job without forfeiting unemployment benefits.

In this case, the findings establish that the claimant had an objectively valid workplace complaint. Illegal activities, including drugs, violence, and sex trafficking, regularly occurred in or near the work place. Security was insufficient, causing the claimant — not a trained security officer — to handle issues related to the illegal activities. In addition, the operation was continuously understaffed, requiring the claimant to perform other duties (besides security) that were outside his job description, such as bathroom cleaning and custodial services. The chronic staff shortages also required the claimant to routinely work long hours, seven days per week, substantially beyond the five days he was hired to work, without extra compensation.

Working in these stressful conditions took a toll on the claimant's health. The record includes medical documentation that his employer had been advised not to schedule him for overnight shifts and also recommending that the claimant be transferred to another location. Eventually, the claimant's therapist recommended to the claimant that he should leave his job due to the stress and its effect on his health.

We note that the precise timing of the claimant's resignation could suggest that he quit in order to avoid a disciplinary warning, which generally would not constitute good cause. However, the overall context indicates otherwise. The claimant's relationship with his supervisor began its final decline after the claimant obtained the May, 2016, schedule and saw that he was again scheduled to work an overnight shift, even though the employer had promised in February that this would not happen. (Finding of fact # 24.) The claimant thereafter had discussions with his doctor and his family and decided to quit because of his stress and depression, prior to the May 12 meeting with the employer. He had prepared a resignation letter in advance of that meeting. (Findings of fact ## 35 and 36). To clarify any ambiguity, the Board specifically recommended in its remand order that the review examiner render a finding about the reasons for the claimant's resignation. The resulting consolidated finding of fact # 41 states, "The claimant resigned from his job due to stress, the effect on his health and a fear for his safety." This finding is amply supported by the evidence in the record and yields a conclusion that the claimant had good cause for leaving his employment because of a valid workplace complaint.

A claimant who quits is required to make reasonable attempts to preserve his employment, or show that such would be futile, in order to qualify for benefits. See Sohler, 377 Mass. at 785. In this case, the claimant repeatedly complained to the employer about inadequate security, inadequate staffing, having to work seven days per week with no additional compensation, and so forth. The employer was unable to achieve a staffing level that would obviate these valid complaints. The claimant also requested a transfer to another location, but that request was denied. In these circumstances, the claimant made adequate attempts to preserve his employment.

We, therefore, conclude as a matter of law that the claimant left his employment for good cause attributable to the employer, within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 22, 2016, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – February 22, 2017



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, 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.

To locate the nearest Massachusetts District Court, see:
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.

SPE/rh