The claimant quit in the middle of an investigation into her record keeping activities. Since she contended she had been discharged, she did not establish good cause attributable to the employer for quitting.

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Issue ID: 0018 9359 08

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by Matthew Shortelle, 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 separated from her position with the employer on May 3, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 11, 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 May 11, 2017. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant neither engaged in deliberate misconduct in wilful disregard of the employer's interest, nor knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified, under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to give the employer an opportunity to testify and present other evidence. Only the employer 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 conclusion, that the claimant was discharged from her employment and her separation was qualifying, under G.L. c. 151A, § 25(e)(2), is supported by substantial and credible evidence and is free from error of law, where after remand, the record shows the claimant quit after being suspended for changing the employment status of former employees in the employer' computer system.

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 as a general manager (GM) for the employer, a fast food restaurant, from May 21, 2007 until May 3, 2016.

2. The DM [(District Manager)] supervised the claimant.

3. The employer's policy requires employees to properly complete employer records. Violators of the policy are punished at the employer's discretion based on the circumstances of the violation.

4. The employer expects employees to maintain accurate employer records. The expectation ensures the employer's legal records are in compliance.

5. The employer reviewed the expectation with the claimant at the time of her hire and bi-annually during her employment.

6. As GM, the claimant had the authority to change employee status in the employer's computer system.

7. Any Assistant Manager or other employee seeking to change an employee status to school student leave without the claimant's action would have to contact the employer's human resources department and have the action then authorized by the DM.

8. The DM did not direct the claimant to provide any employee with her employee code so that status changes could be made while she was on vacation using her information.

9. During the claimant's employment, the claimant changed the status of former employees (the Employees) who had quit to school student leave status rather than quit status.

10. School student leave allows employees to retain their seniority, tenure and benefits and allows employees to return to work when they are able.

11. The Employees did not attend school or take a leave of absence to attend school.

12. In April, 2016, the DM visited the location in which the claimant worked and asked the location's Manager (the Manager) about the status of employees on the location's active list.

13. The Manager told the DM to review the records of employees in the employer's location.

14. In April, 2016, the DM contacted the Employees and the Employees notified the DM they had quit and were not on school leaves of absence. All the Employees told the DM they had quit.

15. On May 3, 2016, the DM and the employer's Human Resources Employee (the HR Employee) met with the claimant and questioned her regarding the Employees and their status being changed to school student leave. The claimant told the DM and the HR Employee she hoped the Employees would return to work.

16. On May 3, 2016, the claimant completed a written statement indicating one of the Employees was not on a school student leave.

17. On May 3, 2016, the DM suspended the claimant as a result of her changing the status of the Employees to school student leave when they had quit and not requested leave for school.

18. On May 3, 2016, after leaving the employer's location, the claimant texted the DM she quit (the Text).

19. The employer completed a Department of Unemployment Assistance (the Department) questionnaire and statements (the Questionnaires) alleging the claimant quit after being suspended for changing employee status to student leave when not appropriate thereby improperly coding employees and manipulating company information.

20. The claimant completed a Department questionnaire and Custom Fact Finding (the Fact Finding) indicating she had been discharged on April 28, 2016, as a result of her performance and the Employees were on school leave.

CREDIBILITY ASSESSMENT

At the initial hearing, the claimant testified repeatedly the employer discharged her on April 28, 2016 and not May 3, 2016 as the Questionnaires alleged. The claimant initially testified the DM and the HR Employee told her she was discharged as a result of expired meat that had not been properly rotated. However, the claimant later admitted the DM told her she would be discharged as a result of her changing the status of the Employees. The claimant also initially testified she did not go on any vacation between February, 2016 and May, 2016, before testifying she went on vacation around April, 2016, the DM directed her to provide the employer's Assistant Manager with her employee code, and the status of employees was changed to school student leave while she was on vacation without any action taken by her. The claimant testified she did not place any employees on a school leave of absence, but that the Employees were in fact on leaves of absence for school. However, the claimant then admitted at least one of the Employees was not in school and not on a leave for school. The claimant asserted the DM changed the status of employees so that turnover in the employer's restaurant was not documented as high. The claimant denied ever sending the Text to the DM and asserted she did not quit her employment. The Fact Finding asserted the

> employer discharged the claimant on April 28, 2016 for performance and that the Employees were on school leave.
>
> The Questionnaires supported the DM's testimony at the remand hearing. The DM directly denied ever knowing the claimant provided any other employee with her employee code, denied the Employees being in school or on school student leave, and denied discharging the claimant, but admitting (sic) she would have been discharged if she had not quit via the Text due to her manipulation of the employer's records.
>
> The DM did not have any copy of the Text including the claimant's phone number.
>
> Based on the inconsistent testimony provided at the initial hearing as described above and the DM's consistent testimony and Questionnaires, it is concluded the DM provided more credible testimony.

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. 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 that the consolidated findings support a denial of benefits.

The review examiner originally concluded that the claimant had been discharged from her employment, but after hearing the employer's testimony on remand, he found that the claimant had quit her employment. We believe the record before us supports such a conclusion. Because the claimant quit her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e)(1), 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 . . . .

The review examiner's consolidated findings establish that the employer placed the claimant on suspension while it investigated her employee record keeping activities. Shortly thereafter, prior to the conclusion of the employer's investigation, the claimant sent the employer a text stating that she quit her employment. Given the claimant's contention that she was fired, she failed to

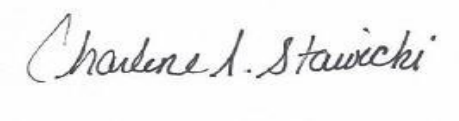
establish that she left her job for good cause attributable to the employer, providing no basis for eligibility, under G.L. c. 151A, § 25(e)(1).[1]

We, therefore, conclude as a matter of law that the claimant is not entitled to benefits, under G.L. c. 151A, § 25 (e)(1), because she voluntarily resigned from her employment without good cause attributable to the employer.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending May 7, 2016, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 18, 2017

Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Judith M. Neumann, 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.

SVL/rh

[1] Alternatively, by insisting that she was fired, the claimant has foreclosed any analysis under Malone Campagna v. Dir. of Division of Employment Security, 391 Mass. 399, 401–402 (1984) (if employees leave employment under the reasonable belief that they are about to be fired, their leaving cannot fairly be regarded as voluntary within the meaning of G.L. c. 151A, § 25(e)(1)).