

**The claimant quit her job for good cause attributable to the employer, because the employer had an angry demeanor, and engaged in verbal abusive outbursts at the claimant, including profanity. The claimant reasonably believed that further attempts to complain to the employer would be futile given her experience of having complained in the past.**

**Board of Review  
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**Issue ID: 0019 0973 40**

## **BOARD OF REVIEW DECISION**

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

The claimant appeals a decision by John P. Cronin, 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 her position with the employer on June 23, 2016. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on July 23, 2016. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on August 31, 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 make subsidiary findings from the record regarding the circumstances of the claimant's separation from employment. 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 quit her job without adequate attempts to preserve her employment is supported by substantial and credible evidence and is free from error of law, where the findings after remand indicate that the supervisor is also the owner and manager of the company, the claimant had complained about the supervisor's mistreatment at an earlier time, and the supervisor resuming such mistreatment was the reason the claimant quit her job.

### **Findings of Fact**

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

1. From December 1, 2008 until June 23, 2016, the claimant worked full-time (40 hours per week) as an office manager for the employer, a shoe company.
2. Approximately four years prior to her separation from the employer, the claimant expressed her concerns to her supervisor, the employer's owner/CEO/manager (the "supervisor"), about instances in which the supervisor had occasionally engaged in "verbal outbursts" towards her when criticizing her work performance.
3. The employer's business is a small one, and often the claimant and the supervisor were the only staff present in the employer's office.
4. Subsequently, the supervisor's treatment of the claimant improved for a period of time.
5. Approximately one year ago, concurrent with financial difficulties for the company, the supervisor – who, on occasion, had admitted to the claimant that she did not know "how to communicate well with people," – reverted to her earlier behavior, becoming constantly "angry" and "unapproachable," engaging in "verbal outbursts," resulting in the claimant feeling that she had to "walk on eggshells" around the supervisor.
6. The claimant did not further complain to the supervisor about this behavior because she believed that it would be futile to do so, given her earlier conversation with the supervisor.
7. In June of 2016, the claimant and her co-worker, who was responsible for a particular customer's account, began discussing, via email, the best manner in which to have a shipment sent from an overseas manufacturer to the claimant.
8. The claimant and her co-worker copied the supervisor on each of the emails.
9. Ultimately, the claimant and co-worker decided, during a telephone discussion, to have the merchandise shipped first to the employer's warehouse, before being sent to the customer.
10. On June 23, 2016, in an email message, the supervisor stated to the claimant, "I need you to make sure that [the customer] gets delivered before the [end of the month] : -) [.]"
11. The claimant responded to the email, indicating that the shipment would first be sent to the employer's warehouse.

12. In response, the supervisor wrote, “What! Why isn’t it flying directly to [the customer]...I don’t understand why we’re receiving it into [the warehouse]. It’s just another unnecessary expense. [W]hy would we do it like this[?]”
13. The claimant responded via email, “I was never told to ship this directly to [the customer].”
14. In response, the supervisor – who was, admittedly, annoyed by the claimant’s decision – called the claimant and expressed her displeasure with the claimant’s decision.
15. The supervisor, who sounded to the claimant to be “enraged,” cursed at the claimant, calling her “incompetent,” and stating that she had “fucked everything up.”
16. During the conversation, the claimant – who had requested that her pay be increased on a number of occasions but had been consistently told by the supervisor, including on the last occasion, to check back in with her in a few months, and who was displeased by her lack of a raise – also indicated, in response to the supervisor’s assertion that she was “incompetent,” that she was giving “110% every day” and did so while not getting a pay raise for three years.
17. As a result of the supervisor’s behavior, the claimant decided to quit her position.
18. As a result, the claimant indicated that she had “had enough” and that the supervisor’s behavior was “unacceptable” before hanging up the phone and walking out of the office, effectively quitting her position.
19. The claimant filed a claim for unemployment insurance benefits on June 27, 2016. The effective date of the claim is June 26, 2016.

#### CREDIBILITY ASSESSMENT:

Although neither the testimony during the hearing nor any of the documentary evidence in the hearing record addresses the question of whether the employer had a separate human resources department, the claimant asserted that her supervisor (the employer’s owner/CEO/manager) consistently — both at the beginning of her employment and during the last year of her employment — engaged in “verbal outbursts” (containing profanities) towards her, and that her “angry” demeanor made the claimant feel that the supervisor was “unapproachable.” Although the supervisor offered bare denials that she engaged in such outbursts, the language that she employed in an email — which evinced her anger and annoyance at the claimant’s work performance — support the credibility of the claimant’s allegations that the supervisor then engaged in verbal abuse of her during a subsequent telephone call regarding

the issue referenced in the email. In light of this, I conclude that the clear, consistent, and specific testimony of the claimant — who, as the supervisor admits, had complained about the manner in which the supervisor spoke to her approximately four years ago — is the more believable and, therefore, more credible evidence in the matter.

### 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 credibility assessment, 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 left her employment with good cause attributable to the employer and is, therefore, eligible for benefits.

The claimant resigned from her employment and accordingly, her qualification 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 . . . [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 show that she quit her job because working conditions were intolerable. Sohler v. Dir. of Division of Employment Security, 77 Mass. 785, 789 (1979).

Following remand, the consolidated findings establish that the owner and manager of the company, who worked directly with the claimant in a small office, engaged in verbal abuse of the claimant, including angry outbursts and profanity. The claimant had in the past complained to the supervisor, but after a temporary period of improvement, the supervisor had reverted to her earlier angry verbal outbursts. The owner/supervisor's angry demeanor and reactions made the claimant reluctant to further approach the owner/supervisor. In the final incident, the owner/supervisor became angry at the claimant and accused the claimant of failing to send a shipment directly to a customer. The supervisor sounded enraged, cursed at the claimant, called her incompetent, and said that she had "fucked everything up." At that point, the claimant told the supervisor that she had had "enough," that the supervisor's behavior was unacceptable, and that she (the claimant) was quitting. These findings of fact are supported by a detailed credibility assessment. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. See School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). The credibility assessment in this case is reasonable in

relation to the record, and the resulting facts persuade us that the claimant had good cause attributable to the employer for quitting her job.

In accordance with G.L. c. 151A, § 25(e)(1), a claimant who quits even with good cause is required to make reasonable attempts to preserve her employment or establish that such an attempt would have been futile. *See Sohler*, 377 Mass. at 785. In this case, the consolidated findings establish that the supervisor was in fact the employer's owner, CEO, and manager throughout the claimant's employment, leaving the claimant without further authority to whom she could appeal for help. Moreover, the claimant did not further complain to the supervisor because she was reasonably fearful of provoking an unpleasant response and reasonably believed that to do so would be futile, given her earlier attempt to express her concerns to the supervisor. Thus the claimant has established both that she made a reasonable effort to stop the mistreatment, and that further efforts would be futile.

We, therefore, conclude as a matter of law that the claimant had good cause attributable to the employer, within the meaning of G.L. c. 151A, § 25(e)(1), when she resigned from her employment and is, therefore, entitled to receive benefits.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending June 26, 2016, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – January 20, 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](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.

SPE/rh