

The claimant resigned because she felt persecuted by the employer after it issued warnings for her performance. After remand, the review examiner found that the warnings were warranted, and the claimant left her job due to general job dissatisfaction, which does not amount to good cause to quit employment under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0019 3840 34

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by John P. Cronin, 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 her position with the employer on July 29, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 29, 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 September 29, 2016. We accepted the employer's application for review.

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 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 on appeal is whether the review examiner's conclusion that the claimant voluntarily left employment for good cause attributable to the employer, under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant resigned due to general dissatisfaction with 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 November 7, 2011, until July 29, 2016, the claimant worked full-time for the employer, a housing partnership. Most recently, the claimant held the position of program representative, into which position she was promoted during 2016.
2. After her promotion, the claimant was reprimanded with frequency, due to her failure to: abide by office dress code; refrain from using her personal cellular telephone during work hours; and meet work output standards, including by allowing her voicemail inbox to fill up and failing to respond timely to voicemail messages and emails from clients.
3. Over the course of her time in the program representative position, the claimant spoke on a number of occasions with the employer's human resources director (the HR director) to complain about the reprimands, which made her feel "persecuted."
4. The claimant indicated that she believed that her own problems in the position resulted from a lack of support from her supervisor, the employer's program manager, who had recently ascended into her position around the same time the claimant had been promoted, and who was – admittedly – also struggling to adapt to her new duties.
5. The HR director consistently told the claimant not to take the criticism of her "personally" but to, instead, focus on completing her job duties.
6. On or about June 29, 2016, the claimant's supervisor provided the claimant with two written warnings, one addressing her attendance, and one entitled "Initial Written Warning for performance."
7. The warning, which the claimant signed on June 30, 2016, stated, in pertinent part, "Effective immediately, you are expected to adhere to avoid having a full mailbox, your voice mailbox should be checked and emptied at least twice a day or more often if necessary [. . .] ad calls shall be returned as soon as possible, but **no later than one business day** from when it was received. Your email inbox should be checked regularly, not less than once a day, for messages. Emails should be replied to **within one business day**."
8. In order to assist the claimant in complying with the performance expectations of her, the HR director, along with the employer's director, instructed the claimant's supervisor to cease assigning the claimant new clients, and, instead, to have the claimant work only on addressing the work that she had already inherited to that point.
9. After receiving the warning, the claimant spoke with the HR director and informed him that she had insufficient time to respond to all of her emails. The HR director suggested that the claimant speak with her supervisor about

- setting up a Microsoft Outlook protocol in order to help her timely complete her work.
10. Despite these efforts by the employer, the claimant continued to complete her work in an untimely fashion.
 11. In early July of 2016, the claimant again spoke with the HR director about potentially receiving further training and/or reassignment to a new position.
 12. Shortly thereafter, the claimant left the office for a number of days on a personal leave.
 13. When she returned, on or about June [sic] 13, 2016, the HR director reached out to her to confirm that she was okay on a personal level.
 14. On July 18, 2016, due to her general dissatisfaction with her employment, the claimant submitted a resignation letter to the HR director.
 15. The letter stated, in pertinent part, “[S]hortly after I became actively employed in my current position, I have felt personally persecuted by [Employer Name] Management Staff on numerous occasions. Many of which were already brought to attention in conversations had with you. The lack of support and understanding displayed by managers in my department has created not only a stressful work environment, but a hostile one at that. For these reasons, I have come to the conclusion that this would be the best decision for me.”
 16. The claimant’s letter further indicated that her last day would be July 29, 2016.
 17. On July 20, 2016, during a meeting, the HR director offered the claimant a transfer to two different positions – where she would work under different supervisors – with the same pay rate and schedule, which the claimant declined. The HR director offered the claimant no other options to help her maintain her employment.
 18. On July 22, 2016, the claimant attended an exit interview with a member of the employer’s human resources department.
 19. The claimant reported that she “no longer felt comfortable in her role,” that she did not, “have the support in place from direct supervisors to be successful,” that she “no longer has the passion to explore working in Housing in the future[, and] intends to pursue other interest[s] and school.”
 20. The claimant also stated that other reasons for her decision to quit include the “negative morale/atmosphere in the department,” and that she was, “Very unsatisfied with receiving written reprimands for her performance when she adamantly feels that the case load was in disarray prior to her taking

accountability and that fact was not taken into consideration when warning memos were issued.”

21. The claimant continued working until July 29, 2016.
22. The claimant filed a claim for unemployment insurance benefits on August 1, 2016. The effective date of claim is July 31, 2016.

CREDIBILITY ASSESSMENT:

The claimant contended during the initial hearing that she quit her position with the employer due to her impermissible “persecution” by the employer’s director and unwarranted performance reprimands issued to her. Based upon the direct and consistent testimony of the employer’s HR director at the remand hearing – as well as additional documentation submitted by the employer therein – I have instead found as a matter of fact that the claimant was not “persecuted,” that the reprimands she received were warranted by her job performance, and that the claimant’s own general job dissatisfaction was the basis for her decision to quit.

The HR director’s testimony during the remand hearing, which I deem to be the credible testimony in the matter, was corroborated by the claimant’s own statements during her exit interview with the employer’s human resources department. The contents of that meeting were memorialized in a form which the claimant signed, attesting to the fact that she “no longer felt comfortable in her role,” that she believed she did not, “have the support in place from direct supervisors to be successful,” and that she “no longer ha[d] the passion to explore working in Housing in the future[, and] intend[ed] to pursue other interest[s] and school.”

In light of the above, and given the claimant’s admissions that she met numerous times with the HR director and that she rejected his offer of a transfer to another position in which she would have been able to work under different supervisors, I conclude that the more believable (and, therefore, more credible) evidence in the matter also includes that: as referenced in the exit interview form, the claimant did, in fact, have issues with timely completing her work; as a means of assisting her in her role prior to her decision to quit, the employer ceased assigning the claimant new clients; and the transfers offered to the claimant by the HR director would have been into positions in which the claimant would have worked the same number of hours and received the same pay rate.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner’s decision to determine: (1) whether the consolidated findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is entitled to benefits is free from error of

law. Upon such review, the Board adopts the review examiner's consolidated findings of fact. In adopting these findings, we deem 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.

Since the claimant quit her employment, here eligibility for benefits is governed under 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

After remand, the review examiner found that the claimant was not "persecuted" by the employer as she alleged. Rather, the reprimands she received were warranted by her job performance. The review examiner also found that the employer tried to assist the claimant in improving her performance by lessening the volume of her work load and offering tips on how to manage her duties. Ultimately, given the claimant's dissatisfaction with her job and the supervision she was receiving, the employer offered to transfer the claimant to other positions in different departments, which offered the same pay and schedule of hours as her current position and had different supervisors. The review examiner found that the claimant turned these positions down and ultimately resigned because she was no longer interested in working in the area of housing and was simply dissatisfied with her employment. Because general and subjective dissatisfaction with working conditions does not provide good cause to leave employment, under G.L. c. 151A, § 25(e)(1), the claimant is disqualified from the receipt of benefits. Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979).

We, therefore, conclude as a matter of law that the claimant voluntarily left her employment without good cause attributable to the employer, as meant under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending July 30, 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 - March 23, 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