

**Claimant quit because she disagreed with the new owner's management style. Though she was concerned that the employer was skirting regulations, there is insufficient evidence that it did so. A poor fit does not constitute good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0019 3933 55**

## **BOARD OF REVIEW DECISION**

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

The employer appeals a decision by M. Lerner, 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 February 1, 2016. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on December 7, 2016. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on June 15, 2017. 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, she was not disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's conclusion, that the claimant had good cause attributable to the employer to resign because her position under the new ownership was confusing, stressful, and a poor fit, is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

1. In 1992, the claimant began to work as a part time assistant to the CEO/owner for a business that ran several family entertainment locations. She became full time in 1993. She was the second in charge after the owner. Over the course of her approximately 25 years working for this owner, the claimant had

- assisted in training other managers, including the owner's children, to assume roles she had within the business.
2. The CEO/owner sold one of his family entertainment locations to the present employer. The sale was effective December 1, 201[5].
  3. The claimant was very involved in the transition of the business from the first owner to the second. She was then hired by the present employer into an unnamed position in which her duties were to include: human resources; getting and maintaining permits and licenses; creating and organizing daily data and administrative functions, such as inventory control; and system support. The specifics of the position were to be determined over time.
  4. The claimant found the transition from being the "second in command" of a small privately owned business to a "back room position" for a global corporation was more difficult than she had anticipated but she tried her best to make it work.
  5. The claimant was initially uncomfortable with the fact that the new owners were operating under the prior owner's license, as she believed that the old owner, whom she had known for a long time, could be liable for any injuries that occurred. This issue was resolved between the old owner and the new owner about two weeks after the new owners took over.
  6. The claimant initially tried to act as a liaison between the old staff and the new management. She stopped doing this after she was specifically directed to send all staff who came to her with questions or concerns that related to things other than human resources/payroll issues, to speak directly to the General Manager or the Senior Field Operations Vice President. She complied but sensed that the staff was uncomfortable with her refusal to help them. This in turn made her uncomfortable.
  7. When the claimant, in an attempt to conform with the above request, told staff that "they" want you to deal directly with "them," she was reprimanded for choosing words [sic] made it appear that she was not on the same team with "them."
  8. The claimant tried to educate the new owners about her understanding of the specific requirements of running this particular business under Massachusetts laws and regulations. She found that if her instruction differed from what the General Manager had intended to do, she was viewed as combative, unwilling to change, and/or not a "team player."
  9. The General Manager hired a friend to work for the employer as a supervisor in training, but with no defined role as to where she would supervise. He allowed this employee to start work before the claimant had completed her hiring file. This made the claimant uncomfortable.

10. On one occasion, while the claimant was at the register helping a staff person to service a customer, the employee, described in fact number 9, reprimanded the claimant, in front of staff and customers, for allegedly being rude and loud. The claimant was a higher-level member [of] management than this employee and found her behavior insubordinate and insulting. The claimant told the employee that she was out of line and that she would talk to her in a minute. When the claimant finished what she was doing, she turned to return to the office where the General Manager [sic]. The new employee grabbed her arm to keep her from leaving. The claimant told her to let go and continued to her office. The new employee followed her. The claimant told him what the new employee had done and questioned what her role was that allowed her to speak to her in that manner. The General Manager told the new employee to apologize and tried to mediate the conflict rather than discipline the new employee. The handling of the incident left the claimant feeling disrespected.
11. The General Manager would sometimes ask employees to work late and the claimant would receive complaints about overtime from the corporate human resources office even though she had not been the one to authorize the time.
12. Soon after taking over the business, the new owners dismantled part of a large climbing structure and kept the remaining part open for use without getting a new permit. Based on their experience with other locations of their business, and the employees from other locations they had inspect the maze, they believed the structure was safe and that it was not necessary under the regulations to get a new license for the modified structure. The claimant believed that they were in violation of regulations, and that the structure could be dangerous. It made her uncomfortable to be associated with what she [thought] to be [non-]compliant and dangerous behavior.
13. Some of the staff, including her son who was an assistant manager, went to the claimant with their concerns about the maze structure. The claimant explained to them that the new management had told her not to get involved in this issue and that they needed to speak to the General Manager or Vice President regarding their concerns. The [claimant] sensed that her refusal to get involved was making the staff uncomfortable, which in turn made her feel uncomfortable.
14. The claimant was not comfortable with how the new owners were dealing with various compliance requirements and she informed them of her concerns. She felt that even if it was the General Manager's name on the final application and license, the licensing agency knew her and would associate her with any compliance issues.

15. When the old permits expired and the employer had to renew, the agency issuing the permits did not indicate concern regarding the way the employer had handled the change to the maze structure.
16. The claimant was in charge of scheduling. She would schedule employees so that the employer did not have to pay overtime. The GM and/or VP would sometimes ask employees to work beyond their scheduled hours and the claimant would then get emails from corporate that she was not allowed to schedule unauthorized overtime. This made her uncomfortable because she was being held responsible for things out of her control.
17. The claimant was concerned that since she was responsible for compliance issues, she would be held accountable for any non-compliance if there were an audit.
18. On Sunday January 30, 2016, the claimant was not scheduled to work. On that day, the General Manager went around speaking to the staff, mostly teenagers, and telling them it was time to get off of "Team [claimant's name]" and on to "Team [GM name]".
19. When the claimant came into work, on Monday February 1, 2016, she was told what the General Manager had been saying to the employees on Sunday. She felt that by doing this, the General Manager had been damaging her reputation with the staff, negatively affected her authority as a manager within the business, and told the staff that she was not actually a member of the existing management team.
20. The claimant asked the General Manager if he had said this to the staff and he admitted that he had. He agreed that it was a mistake. The claimant immediately walked out to her car indicating that she was quitting. The GM followed her and apologized. He told her he had not meant to damage her reputation. She did not accept his apology and drove away [sic].
21. The General Manager commented as the claimant was driving off that he was not ready for her leave.
22. The day after she walked off the job, the claimant considered whether she should return to her job. She thought about what she had expected her role with the employer to be and what it actually turned out to be. She realized that after having worked with the General Manager for 2 months, she was not comfortable with his management style and that it was unlikely that they would ever work well as a team. She concluded that it was not realistic to believe she had a future as a real member of the new management team. She believed and that once her usefulness, as a conduit between the old and the new, was exhausted, the employer would find a way to discharge her or force her to resign. She did not therefore attempt to return to her job.

23. On February 21, 2016, the claimant filed her 2016-01 claim for unemployment benefits.

24. On December 7, 2016, DUA issued a Notice of Disqualification [sic], with Issue Identification number 0019 3933 55-01, stating that the claimant was approved under Section 25(e)(1) of the law to receive unemployment benefits, if otherwise eligible.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact and credibility assessment except to note that the reference to the DUA's determination in Finding of Fact # 24, incorrectly refers to it as a Notice of Disqualification. The record, as well as the rest of the finding, shows that it was a Notice of Approval. *See* Exhibit # 6. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant's reasons for leaving her job amounted to good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

Because the claimant resigned from her job, the review examiner properly analyzed her eligibility for benefits 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 . . . .

The explicit language in § 25(e)(1) places the burden of persuasion on the claimant. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

The findings of fact list a number of instances that occurred in the two months between the new owners taking over the business on December 1, 2015, and the claimant's last day of work on February 1, 2016, which led to her resignation. We consider whether any one incident individually, or all of them combined, constituted good cause attributable to the employer to leave her job.

The review examiner found that many of the ways that the new owner or General Manager or Vice President were operating made the claimant feel uncomfortable, disrespected, or that her reputation was being damaged. *See* Findings of Fact ## 5, 6, 9, 10, 12–14, 16, 19, and 22. At times, she was reprimanded or criticized. *See* Findings of Fact ## 7, 8, and 11. Ultimately, the claimant concluded that she was not comfortable with the General Manager's management style and that it was unlikely they would ever work together as a team. Finding of Fact # 22.

There is no question that the claimant was unhappy with her new employer and that she may have reached her breaking point. She also may have made the right personal decision to terminate her employment relationship. However, that does not mean that she is entitled to unemployment benefits. To determine whether the claimant had good cause attributable to the employer to resign, we are instructed to focus on the employer's conduct and not on the employee's personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

The claimant must first show that she had a reasonable workplace complaint. *See* Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 284 (1985). Good cause to leave employment due to "intolerable working conditions has generally been understood to import substandard sanitation, temperature, ventilation, or other like factors which may contribute to the physiological discomfort or demise of exposed employees." Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979) (citations omitted). General and subjective dissatisfaction with working conditions is not good cause under G.L. c. 151A, § 25(e)(1). *Id.* As the Supreme Judicial Court further explained in its Sohler decision:

If the appellant had demonstrated that she was required to perform work clearly antithetical to that for which she was initially employed, our result might well be different. . . . Similarly, the appellant might have shown that the substandard working conditions were such that her affiliation with the hospital subjected her to professional sanction, criminal prosecution, or liability in tort. . . . The appellant here has made no such claims. The evidence she presented merely revealed her overall disappointment with the manner in which the hospital was run . . . Such disappointment does not rise to the level of good cause.

Id. (citations omitted.)

In this case, the claimant does assert that the employer's dismantling of the maze climbing structure violated the law, and, apparently, other staff shared her view. Findings of Fact ## 12 and 13. However, we are unable to discern from the evidence presented that the employer actually violated any regulations, and the review examiner found that the agency responsible for permitting the process did not indicate concern about how it was done. *See* Finding of Fact # 15. All that we have is that the way it was handled made the claimant feel uncomfortable. *See* Findings of Fact ## 12–14.

The same may be said for many of the other problems presented at the hearing. Although the claimant's concern about the new owner operating under the prior owner's license initially made her uncomfortable, the issue was resolved between the two owners within two weeks. Finding of Fact # 5. Moreover, the claimant's dissatisfaction with being instructed to send all staff questions that were not related to human resources or payroll to the General Manager or Vice President, the General Manager hiring a new supervisor-in-training before the claimant had completed her hiring file, and the General Manager or Vice President directing employees to work overtime when she had been told that it was not allowed were all employer actions that made the claimant feel uncomfortable. They were not unlawful or unreasonable employer actions. *See* Findings of Fact ## 6, 9, and 16.

We next consider that the claimant was reprimanded about the words she used to refer staff directly to management. Finding of Fact # 7. She received complaints about overtime charges from the corporate human resources office. *See* Finding of Fact # 10. She ran into resentment from the General Manager, when he disagreed with her instructions to the new owners about specific requirements of running the business. *See* Finding of Fact # 8. In none of these instances do we see any formal discipline or other detrimental change to the claimant's terms of employment. An employer's express dissatisfaction with work performance generally does not constitute good cause to leave employment under G.L. c. 151A, § 25(e)(1).

There are two instances that show valid workplace complaints about how the claimant was treated. The first is by the new supervisor-in-training, who grabbed the claimant's arm after the claimant called her out about rude behavior. *See* Finding of Fact # 10. The second was when the General Manager told staff to get off "Team [claimant]" and onto "Team [General Manager]." *See* Finding of Fact # 18. However, in both cases, the General Manager responded reasonably and appropriately. He instructed the new supervisor-in-training to apologize, and after admitting that his own behavior was a mistake, he apologized directly to the claimant. Findings of Fact ## 10 and 20.

Lastly, the review examiner found that the claimant was concerned that she would be held accountable for any non-compliance issues, if there was an audit. Finding of Fact # 17. It is unclear from this finding whether the review examiner was referring to the claimant's issues with the maze structure or to the employer's CORI checks.<sup>1</sup> Regardless, there is no evidence that the employer was actually not complying with the law or that the claimant would have had any liability if and when there was an audit. Thus, she has not shown unreasonable employer behavior.

In sum, the claimant has demonstrated that she disagreed with how the new owners and managers were running the business, they did not necessarily like how she was doing things, and she did not believe she would ever fit in with the new management team. We conclude as a matter of law that these reasons for leaving her job do not constitute good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

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<sup>1</sup> The claimant testified that she believed the employer was skirting the CORI regulations.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning January 31, 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 - December 15, 2017**



Paul T. Fitzgerald, Esq.  
Chairman



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.

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