

0019 8267 52 (July 17, 2017) – Although the employer officially “discharged” the claimant for job abandonment after leaving work without informing anyone, the Board disqualified her under G.L. c. 151A, § 25(e)(1), because the claimant told a human resources officer that she was done and thinking of quitting, she told the president that she was quitting, and she took home most of her personal belongings.

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Issue ID: 0019 8267 52

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by 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 we affirm the conclusion that the claimant is not eligible to receive unemployment benefits. However, we do so pursuant to G.L. c. 151A, § 25(e)(1).

The claimant separated from her position with the employer on or around September 20, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 6, 2017. The claimant 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 denied benefits in a decision rendered on May 2, 2017.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer’s interest and, thus, was 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 claimant’s appeal, we accepted the claimant’s application for review. Our decision is based upon our review of the entire record.

The issues before the Board are: (1) whether the review examiner correctly applied G.L. c. 151A, § 25(e)(2), to the claimant’s separation, where the claimant told the Chief Human Resources Officer that she “was done” and was considering quitting her job, told the employer’s President that she was going to quit her job, cleaned out many personal belongings from her office, and left the workplace without informing anyone that she was leaving, and (2) if the claimant caused her own separation from employment, whether she had good cause attributable to the employer for doing so.

Findings of Fact

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

1. On December 13, 2010, the claimant started working for the employer, a service provider for blind individuals, as a fulltime administrative assistant.
2. The claimant worked a rotating schedule of Monday through Friday from 6:30 a.m. until 2 p.m. or Monday through Wednesday from 6:30 a.m. until 4 p.m. and Thursdays from 6:30 a.m. until 3 p.m.
3. The claimant was paid \$20.32 per hour.
4. The claimant's supervisor was the Director of Education and Community Service.
5. The employer expected the claimant not to leave work without permission from the employer or without letting the employer know that she was leaving work.
6. The employer does not have a written rule or policy to address this behavior.
7. The claimant was never warned in the past for violating this expectation.
8. The claimant was aware of this expectation.
9. The employer has this expectation to ensure that duties are completed.
10. Whether an employee is discharged for violating this expectation is left to the discretion of the employer.
11. The claimant previously used the employer's front parking lot to access the employer's establishment.
12. The employer recently instructed the claimant and other workers by e-mail to use the employer's back parking lot to access the employer's establishment.
13. In the past, the claimant had issues accessing the employer's establishment as the door was locked.
14. On September 20, 2016, the President arrived to work at 5:45 a.m. The President entered the employer's establishment by using the back door. The President locked the back door.
15. The front door of the employer's establishment was unlocked.
16. The President subsequently had a meeting with the Chief Human Resources Officer.

17. The claimant arrived to work at 6:30 a.m. The claimant went to the employer's back door entrance. The door was locked.
18. On September 20, 2016 at 6:36 a.m., the claimant sent the Chief Human Resources Officer the following text message: "I can't get in (Exhibit 9)."
19. The Chief Human Resources Officer did not realize the claimant was attempting to reach the Chief Human Resources Officer as the Chief Human Resources Officer was in the meeting with the President.
20. The claimant was frustrated that the back door was locked.
21. The claimant did not attempt to see if the front door was open. It was a 3-minute walk between the front door entrance and the back door entrance.
22. The claimant started to bang on the back entrance door in an effort to have the door unlocked.
23. The Chief Human Resources Officer subsequently went to the back door to unlock the door for the claimant.
24. The Chief Human Resources Officer was trying to make light of the situation that the back door was locked.
25. The claimant was upset and frustrated.
26. The claimant informed the Chief Human Resources Officer that the claimant was done.
27. The claimant told the Chief Human Resources Officer that the claimant was going to write a letter. The claimant made this comment as she was considering quitting her job at the employer's establishment.
28. The claimant was yelling at the Chief Human Resources Officer.
29. The President heard the claimant's discussion with the Chief Human Resources Officer from his office.
30. The President got up off of his seat and said good morning to the claimant.
31. The claimant said good morning to the President.
32. The claimant went into her office and closed the door.
33. The claimant started to pack her personal belongings in her office into a bag. The claimant started to take down pictures and calendars she had on the walls.

34. The claimant subsequently decided to speak with the President.
35. The claimant had not previously intended on speaking with the President on that day. The claimant decided to speak with the President on that day as the back door had been locked upon her arrival. The claimant would not have decided to meet with the President on that day if the back door had not been locked on that day upon her arrival.
36. The claimant went to the President's office and asked to speak with the President.
37. The claimant and the President had a meeting in his office.
38. During this meeting, the claimant informed the President she was aggravated that the back door was locked. The claimant also informed the President that the employees had been instructed to park in the back lot instead of the front lot. The claimant informed the President that the door has been locked in the past upon the claimant's arrival.
39. During the meeting, the President offered to open the back door himself in the morning as the President was the first one in the building in the morning.
40. The President informed the claimant that he did not realize the claimant had been locked out of the building in the past.
41. During the meeting, the claimant informed the President that she was going to quit her job. In response to this information, President informed the claimant that was her decision to make.
42. The claimant informed the President that she had to think about the situation.
43. During the meeting, the claimant did not inform the President that she wanted to go home and think about what to do. During the meeting, the claimant did not inform the President she was going home for the day.
44. The claimant subsequently left the President's office. The President assumed the claimant was going back to work.
45. The claimant subsequently left the employer's establishment without permission.
46. The claimant took her personal belongings home with the exception of a microwave oven.
47. The President subsequently noticed that the claimant's personal belongings were gone with the exception of her microwave.

48. The President waited for the Director of Education and Community Service to arrive at work. The President asked the Director of Education and Community Service if she was aware that the claimant had left work. The Director of Education and Community Service was not aware that the claimant had left work.
49. The President determined the claimant had abandoned her job at the employer's establishment.
50. The employer subsequently shut off the claimant's e-mail access for privacy reasons and to get information for work tasks.
51. The claimant subsequently attempted to access her work e-mail from home. The claimant discovered she could not access her e-mail.
52. On September 20, 2016 at 2:46 p.m., the claimant sent the Chief Human Resources Officer the following text message: "My email password has been changed (Exhibit 9)."
53. On September 20, 2016 at 2:50 p.m., the claimant sent the following group text message to the Chief Human Resources Officer and Director of Education and Community Service: "Is there a reason my password has been changed I was trying to see if perhaps a meeting had been set for tomorrow (Exhibit 10)?"
54. In response to the claimant's text message, the Chief Human Resources Officer sent the claimant the following text message: "[President's name omitted] and I would like to meet with you tomorrow morning when you arrive, say 6:45 (Exhibit 9)."
55. In response to the Chief of Human Resources Officer's text message, the claimant sent the Chief Human Resources Office the following text message:
- "Is this a set up? Like what u [sic] did to [worker's name omitted]
- I will not meet unless I know what this meeting is about. I do not feel that I will have fair representation.
- Why can't I get into my emails unless I have been fired (Exhibit 9)."
56. On September 21, 2016, the employer had a meeting with the claimant. The President and the Chief Human Resources Officer attended the meeting.
57. During the September 21, 2016, meeting, the employer discharged the claimant from work.

58. The employer presented the claimant with a termination letter dated September 21, 2016, listing job abandonment and unprofessional behavior (Exhibit 3).
59. The employer discharged the claimant from work for leaving work on September 20, 2016, without permission from the employer and without letting the employer know she was leaving work.
60. The employer also had concerns about the claimant acting unprofessionally towards the Chief of Human Resources on September 20, 2016. The employer would not have discharged the claimant for this sole reason. The consequences for the unprofessional behavior alone most likely would have been a warning.
61. On September 26, 2016, the claimant filed for unemployment insurance benefits (Exhibit 1). The effective date of the claim is the week beginning September 18, 2016.
62. On February 6, 2017, the Department issued the a Notice of Disqualification denying the claimant benefits under Section 25(e)(2) of the Law commencing the week beginning September 18, 2016 and until she met the requalifying provisions of the Law (Exhibit 5).

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 except as follows. Findings of Fact ## 57 through 60 refer to the employer discharging the claimant from her employment. For the reasons noted in this decision, we do not consider what happened on September 21, 2016, to be the actual point of separation for the claimant. Thus, although the word "discharge" is used in these findings, we attach little legal significance to it. We accept these findings, as they accurately account for the events that transpired on September 21, 2016, (*i.e.*, the claimant attended a meeting, the claimant was told that she was discharged, the claimant was given a termination letter), but we do not accept that the claimant's separation happened at that time. As discussed more fully below, we reject the review examiner's legal conclusion that G.L. c. 151A, § 25(e)(2), applies in this case. Rather, we conclude that G.L. c. 151A, § 25(e)(1), applies, and that the claimant is disqualified from receiving unemployment benefits pursuant to that provision of law.

As noted, the review examiner concluded that the claimant was discharged from her position on September 21, 2016, thus separating her from her employment. Indeed, both parties testified that during the meeting on September 21, the claimant was given a termination letter and told that her employment was over. At first glance, it would appear that G.L. c. 151A, § 25(e)(2), the section of law governing discharges, would apply in this case. However, focusing solely on what transpired on September 21 ignores the claimant's actions on September 20.

On September 20, the claimant was locked out of the employer's building, causing her great frustration and unhappiness. When the Chief Human Resources Officer finally unlocked the door, the claimant told her that she was "going to write a letter," that she was "considering quitting," and that she "was done." *See* Findings of Fact ## 26 and 27. Clearly, at this point, the claimant was thinking about quitting, and one member of management was aware of what she was thinking of doing. The claimant then went to her office, where she began to pack up her personal belongings. After being in the office for a few moments, she decided to speak with the President about the back door being locked. During her discussion with the President, the claimant informed him that "she was going to quit her job." Finding of Fact # 41. She specifically did not tell the President that she needed to go home for the day. Finding of Fact # 43. However, she did indicate that she needed to think about things further. Finding of Fact # 42. Later, the President saw that the claimant was not at work and that most of her personal belongings save for a microwave oven had been taken out of her office. At that point, knowing that the claimant had previously indicated that she was going to quit, and that she would think about things, the President determined that the claimant "abandoned" her job. Finding of Fact # 49.

This series of events leads us to conclude that the claimant initiated her separation in this case. The claimant quit her job on September 20, 2016, and the employer confirmed this separation on September 21, when it gave her a letter terminating her for "job abandonment." We recognize that the employer's witnesses may not be familiar with the jargon of unemployment law. The phrase "job abandonment" usually connotes some type of loss of communication between a claimant and her employer to an extent that the employer reasonably believes that the claimant has left her job. Here, we do not think that there was "job abandonment" in that sense. However, we think that the employer is using that term to describe a simple quit situation. When the claimant told two senior employees that she was "done" and "going to quit her job," and when she then removed most of her personal belongings from her office,¹ the employer was reasonable in concluding that the claimant quit her position. The employer's action in shutting off her e-mail access is understandable when the separation is viewed in this light.

This brings us again to the events of September 21. On that day, the claimant was given a termination letter, indicating that she was being terminated for job abandonment and inappropriate behavior.² Given what transpired the day before, it appears that the employer was merely confirming or memorializing the fact that the claimant quit her job. Although not noted in the findings, the employer may have thought it necessary to have the September 21 meeting, since the claimant tried to access her e-mail after she left the workplace on September 20, and she was asserting that she thought that she had been discharged (based on the employer's act of shutting off her e-mail access). As noted in the findings, the claimant sent some text messages to

¹ The fact that the claimant left her microwave oven does not change our analysis. The evidence and findings, which are in accord with the employer's testimony during the hearing, suggest that the claimant took home many personal items but left the microwave oven. It is highly possible that the microwave was too big or bulky for the claimant to carry out of the office while she was also taking out many of her other personal items. Leaving that one item does not, in itself, suggest that the claimant was going to go back to work after September 20, 2016.

² Since the inappropriate behavior would only have warranted a warning, the real reason for the separation was the claimant leaving the premises on September 20 without telling anyone. *See* Finding of Fact # 60.

the employer's Chief Human Resources Officer, which at first went unanswered. Eventually, the employer agreed to meet with the claimant on September 21. The September 21 meeting then confirmed the claimant's separation.

We acknowledge at this point that the claimant never formally communicated to the employer that she was resigning her job, and she did not give the employer any notice that she was going to do so. Her verbal statements to the President on September 20 could be viewed as ambiguous. For example, she stated that she was quitting, but also stated that she was going to think about it. Yet, after she said these things, she took her belongings and left the employer's building without notifying anyone what she was doing. Even if the claimant did not formally notify the employer that she had made the decision to quit, the findings of fact readily indicate that the claimant brought her state of unemployment upon herself by way of her actions on September 20. "[T]he general purpose of the Employment Security Act is 'to afford benefits to persons who are out of work and unable to secure work through no fault of their own.'" LeBeau v. Comm'r of Department of Employment and Training, 422. Mass. 533, 538 (1996), *quoting* Cusack v. Dir. of Division of Employment Security, 376 Mass. 96, 98 (1978). Moreover, "the inquiry is not whether the employee would have preferred to work rather than become unemployed . . . but whether the employee brought his unemployment on himself." Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002, 1003 (1985) (rescript opinion) (citation omitted). Here, from the claimant's testimony, one might conclude that the claimant wanted to continue to work for the employer. However, her actions and words indicate that she caused her own separation.

In light of our discussion above, we conclude that the claimant's separation is controlled by G.L. c. 151A, § 25(e)(1). That section of law 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

Under this provision of law, the claimant has the burden to show that she is eligible to receive unemployment benefits.

In this case, the claimant was extremely upset and frustrated when the back door to the employer's building was locked on September 20, 2016. She had prior experiences with the door being locked. While this situation was clearly frustrating for her, we cannot conclude that this gave her good cause to leave her job on September 20. This is especially true where the Chief Human Resources Officer opened the door not too long after the claimant initially arrived, and the President personally offered to help deal with the situation. *See Findings of Fact ## 23 and 40.* It may be understandable why the claimant did not believe what the President was telling her. After all, the issues with the locked door seem to have been ongoing. However, this type of general workplace complaint does not give rise to "good cause" to leave a job.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits is supported by substantial and credible evidence in the record. We further conclude that, based on the claimant's actions and statements to the employer's President and Chief Human Resources

Officer on September 20, the review examiner's application of G.L. c. 151A, § 25(e)(2), was an error of law. The claimant caused her own separation, and the provisions of G.L. c. 151A, 25(e)(1), apply to disqualify the claimant from receiving benefits.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning September 18, 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 - July 17, 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.

SF/rh