

The claimant resigned after a month because his job teaching difficult, troubled teens with learning disabilities, behavioral, psychological, and neurological problems for which he had no training, experience, or education, was unsuitable.

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Issue ID: 0020 0358 69

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Rachel Zwetchkenbaum, 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 his position with the employer on October 26, 2016. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 5, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on March 14, 2017. 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 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 take further testimony regarding the reasons for the claimant's decision to resign from his job. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her 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 did not have good cause attributable to the employer to resign is supported by substantial and credible evidence and is free from error of law, where following remand, the consolidated findings establish that the claimant resigned after a month because he feared for his safety after being threatened by a student, he had no training or experience teaching in an urban high school where many of the students had behavioral, psychological or neurological problems, and he believed his health was being affected by the job.

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 Spanish Teacher, for the employer, a School, from September 26, 2016, until October 26, 2016, when he quit his employment.
2. The claimant worked a full-time schedule of hours for the employer.
3. The claimant worked on October 26, 2016.
4. On October 26, 2016, one of the claimant's students was acting up in class and the claimant told the student that he needed to go to the Dean's office. The student looked the claimant in his eyes and said, "This afternoon when you leave school, I'll be waiting for you outside". The student then left the classroom and went to the Dean's office. The claimant felt that what the student had said amounted to a threat that put his life at risk. The claimant had previously reported this student's behavior to the Vice Principal and the Deans. The student had been disciplined in the past. The claimant believed that his personal security was at risk.
5. On other occasions, the same student would whisper things to himself and when the claimant asked him what he said, he would say "nothing".
6. Many of the claimant's students had behavioral, psychological, or neurological problems. Some of the students were on special education plans.
7. Many of the claimant's students often behaved poorly during class. Sometimes the students would throw their books on the floor or at each other.
8. The claimant was not able to control the behavior of the students in his classroom because he had never worked in a high school before and did not have a background in academics.
9. The claimant had never taught in an urban high school prior to this job. The claimant did not have training in teaching urban high school students. The claimant's previous teaching experience was solely in a post-high school setting.
10. The claimant did not feel that he had the necessary professional skills, education tools, or background in psychology or special education to teach in this school. The claimant was not able to teach the students the material he had been hired to teach them.
11. The claimant gave all of his students their first exam on October 26, 2016. Many of the students were not taking the exam seriously and were not listening to him. Some students threw their test on the floor or in the trash. When the claimant attempted to give the students the exams they had tried to throw out, they said that they were not going to do anything because they did not understand anything. Many of the students also made a lot of noises which

annoyed the claimant. The claimant sent several students from each of his classes to the Dean's office.

12. The claimant had several conversations with the Vice Principal in which he sought help with his problems with the students' behavior. The Vice Principal was helpful when she came to his classes. When the Vice Principal was in the classroom, the students behaved, but when she left, the students became rowdy again. The claimant also sought help from other teachers and counselors, but it did not make a difference.
13. The claimant was experiencing pressure, stress, anxiety, and depression. The claimant believed that his health was being affected by his inability to control the students and teach them effectively. The claimant was having trouble sleeping. The claimant always felt nervous and dizzy.
14. The claimant left work at the end of the day on October 26, 2016.
15. The claimant never reported to work again.
16. During the claimant's tenure with the employer, he had never been disciplined or spoken to about his performance.

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 except for the portion of Consolidated Finding # 8, which states that the claimant did not have a background in academics.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude, contrary to the review examiner, that the consolidated findings support an award of benefits to the claimant.

Since the claimant quit his employment, his eligibility 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

Under this section of the law, the claimant has the burden to show that he left his employment for good cause attributable to the employer.

¹ This portion of the finding conflicts with Consolidated Finding # 9, which states that the claimant has previous teaching experience at the post-high school level.

In the instant matter, the review examiner denied the claimant benefits because she concluded that the claimant's separation was due to general job dissatisfaction. General and subjective dissatisfaction with working conditions does not constitute good cause to leave employment under G.L. c. 151A, § 25(e)(1). Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979). In light of the consolidated findings, however, we do not agree that the claimant's reasons for leaving were merely general job dissatisfaction. We believe the circumstances presented good cause attributable to the employer.

Based on our review of the consolidated findings and the record as a whole, we conclude that the job was not objectively suitable for the claimant. "Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of 'good cause.' See Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 n. 3 (1981)." Baker v. Dir. of Division of Unemployment Assistance, No. 12-P-1141, 2013 WL 3329009 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*.

The record shows that the claimant's previous teaching experience was with older students and he had no training or experience whatsoever in teaching teens with learning disabilities, behavioral, psychological, or neurological problems. Because the claimant was unable to control students who behaved badly in class (*e.g.*, throwing books, and refusing to take tests), the claimant was unable to teach the material he had been hired to teach. The claimant was also unable to sleep and felt nervous and dizzy from stress every day. Finally, on his last day of work, the claimant feared that a student's threat had put his life at risk. We think that the claimant reasonably believed that he did not have the professional skills, education tools, or background in psychology or special education necessary to teach at the school. Suitability of a particular job is dependent on many factors. See G.L. c. 151A, § 25(c) (noting factors to be considered include health, safety, morals of claimant; prior education and training; travel distance and costs; and remuneration); Pacific Mills v. Dir. of Division of Employment Security, 322 Mass. 345, 350 (1948). Here, we believe the factors are sufficient to warrant a conclusion that the claimant's position was unsuitable.

An employee who leaves his employment also has the burden to show that he made a reasonable attempt to preserve his employment, or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). In this case, the claimant made such attempts. The consolidated findings show that the claimant frequently sought help from the vice principal, the deans, and from other teachers and counselors, but it had made no difference. Thus, it was reasonable for him to conclude that further efforts to seek help with handling the students would have been futile.

We, therefore, conclude as a matter of law that the claimant's job was unsuitable, within the meaning of G.L. c. 151A, § 25(c), and that the claimant therefore left work for good cause, within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending October 23, 2016, and for subsequent weeks if otherwise eligible.

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.

SPE/rh