

Even if the claimant's workplace complaints about her supervisor and her workload were found to have detrimentally affected her health, the claimant failed to establish that her decision to forego the human resource manager's offer of help was reasonable or that such efforts to preserve her employment were futile.

**Board of Review
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Issue ID: 0020 2484 25

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by Eric Sullivan, 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 November 16, 2016. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 7, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on March 10, 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, 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 obtain further evidence about the claimant's reasons for leaving and her efforts to preserve employment. Only the employer attended the remand hearing. Thereafter, the review examiner issued consolidated findings of fact. However, we remanded a second time to request that the review examiner provide additional subsidiary findings from the record pertaining to the claimant's efforts to preserve employment, as well as a further explanation as to the reasons underlying his credibility assessment. The review examiner has now issued revised 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 made sufficient efforts to preserve employment is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that the claimant abruptly resigned rather than give the employer's human resource manager an opportunity to address the claimant's concerns.

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 full-time for the instant employer as an Accounts Receivable Supervisor from 5/18/2015 until her last physical day of employment on 11/16/2017.
2. Just prior to the claimant's separation, the claimant received a semi-annual performance review from her supervisor which she was unhappy with.
3. The claimant contacted the Senior Manager of HR Services who set up a meeting with the claimant on 11/16/2016 in order to address the claimant's concern.
4. At the meeting on 11/16/2016, the claimant told the Senior Manager of HR Services that she felt disrespected by her immediate supervisor, that she was upset with dating relationships in the company and dissatisfied with the employer's technology.
5. The Senior Manager of HR Services and the claimant came up with strategies to address her concerns and the claimant stated that she was willing to work with the strategies to address her concerns and to continue working with her immediate supervisor.
6. The Senior Manager of HR Services stated she would help her work with her immediate supervisor to address her concerns.
7. The next day on 11/17/2017, the claimant emailed the employer at 5:52 a.m. stating that she was resigning due to a toxic work environment caused by her supervisor.
8. The claimant never attempted to work on the strategies discussed with the Senior Manager of HR Services the day prior to her resignation.
9. The employer was not provided the opportunity to work with the claimant to address her concerns prior to her sudden resignation.
10. The employer did not have any intention of terminating the claimant's employment.

Remand Credibility Assessment:

The testimony of [the] Senior Manager of HR Services is accepted as credible in all contested area[s] since she was forthright in giving testimony and her detailed version of the events made more sense than the claimant's vague contentions in such contested areas such [sic] as the toxic work environment

and her attempts to work with the Senior Manager of HR Services to address her concerns. For this reason, the employer's testimony is considered more reliable.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. We decline to attribute any weight to Consolidated Finding of Fact # 9, as it is more in the nature of a legal conclusion than a finding of fact. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463–464 (1979) (“Application of law to fact has long been a matter entrusted to the informed judgment of the board of review.”). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is ineligible for benefits.

Because the claimant quit her job, the review examiner properly considered her eligibility for benefits, pursuant to the following provisions under G.L. c. 151A, § 25(e), which state, in pertinent part:

[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

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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 provisions, the claimant has the burden to show that she left employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

After hearing only the claimant's testimony during the initial hearing, the review examiner's findings described how problems with the employer's computer system conversion caused both the claimant's workload and health problems to increase.¹ He also found that when the claimant tried to address these issues with her immediate supervisor, he “snickered” at the claimant and was of no help.² We remanded for additional evidence to better understand when the claimant's health problems began and to find out more about her efforts to address her problems in the

¹ See Remand Exhibit # 1, Findings of Fact ## 3–7.

² See Remand Exhibit # 1, Findings of Fact ## 8–9.

workplace. By participating in the remand hearing, the employer was able to provide some additional information pertaining to the claimant's efforts to preserve her employment.

It is not entirely clear why the review examiner dropped all reference to the claimant's health problems and increased workload in his consolidated findings. Instead, he confined the reasons for the claimant's leaving to her dissatisfaction with the employer's technology, dating relationships at work, and a toxic work environment caused by her supervisor. *See Consolidated Findings ## 4 and 7.* Nonetheless, even if the consolidated findings included more details about the claimant's interactions with her supervisor, indicating that he had created a difficult work environment for the claimant, that this work environment affected the claimant's health, and that this was the reason for the claimant leaving her job, the claimant would not have sustained her burden under G.L. c. 151A, § 25(e).

The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93-94 (1984). Prior to leaving, the claimant met with the Senior Manager of Human Resources, who offered to address the claimant's concerns, including an offer to help the claimant work on issues with her immediate supervisor. *See Consolidated Findings ## 4–6.* Instead of accepting that help, the claimant abruptly resigned. By not participating in the remand hearing to provide answers to the Board's questions about why she did not give the human resources manager an opportunity to correct the situation, the claimant has failed to show that she acted reasonably or that further attempts to preserve her employment would have been futile.

We, therefore, conclude as a matter of law that the claimant is disqualified under G.L. c. 151A, § 25(e)(1), because she failed to prove that, before quitting, she made a reasonable attempt to preserve her employment or that such an attempt would have been futile.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning November 27, 2016,³ 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 - August 28, 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.

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³ The review examiner's decision had awarded benefits for the period beginning November 17, 2016. This appears to have been a typographical error inasmuch as the claimant first filed her unemployment claim on November 28, 2016, and the DUA assigned an effective date of November 27, 2016. The first payable week under this claim following her initial wait week was the week beginning December 4, 2016.