

**Board of Review**  
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**Member**  
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**Issue ID: 0020 2547 62**

## **BOARD OF REVIEW DECISION**

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

The claimant appeals a decision by Marielle Abou-Mitri, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits following her separation from employment on November 18, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On January 24, 2016, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and only the claimant attended the hearing. In a decision rendered on March 31, 2016, the review examiner affirmed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was disqualified, under G.L. c. 151A, § 25(e)(1). The Board accepts the claimant's application for review.

### **Ruling of the Board**

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record. We also conclude that the ultimate decision to deny benefits is free from error of law.

We do, however, disagree with the review examiner's conclusion that the claimant did not show that she had a reasonable workplace complaint prior to her separation. When addressing the "good cause" standard, the focus is 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). Here, the review examiner found that the claimant's job duties were taken away from her, and that her immediate supervisor, the associate director of development, was talking about her in a disparaging manner to another employee. These circumstances created a difficult work environment for the claimant, and they could have given rise to a qualifying separation. Therefore, we conclude that the claimant had reasonable complaints about what was going on at work.

Nevertheless, we agree with the review examiner that the claimant failed to show that she made reasonable efforts to preserve her employment. 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).

In this case, the claimant first told the employer about her workplace issues on November 15, 2016. The employer promptly scheduled a meeting for November 18, but the claimant did not attend that meeting. We agree with the review examiner's conclusions that, even if the claimant was concerned about the meeting, and even if she had a panic attack on November 18, the claimant had other reasonable options available to her short of quitting. For example, the claimant could have spoken with human resources prior to November 18, regarding her concern about the performance evaluation. Based on the evidence in the record, we cannot conclude that efforts at trying to keep her job were futile, considering that the claimant had first notified the employer about her issues three days prior to quitting, and that the employer had no opportunity to address the problems.

We further note that the review examiner's conclusions regarding the claimant's health concerns and medical issues are supported by the record. The claimant submitted a note from her medical provider (Exhibit # 5A), but the review examiner reasonably gave that note a minimum amount of weight.<sup>1</sup> The fact that the claimant had a panic attack on November 18 may be true; however, a reasonable course of action would have been to reschedule the meeting, rather than quit. In short, although the claimant was stressed about her work situation, she has not presented substantial and credible evidence to show that she quit her job due to circumstances beyond her control or that her medical condition prevented her from trying to stay employed.

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<sup>1</sup> The note was written several months after the claimant separated from her job and after the claimant filed her claim for unemployment benefits (and was denied benefits by the DUA). The note does not indicate how long the provider has seen the claimant or whether she has been diagnosed with any recognized medical conditions. The note appears to re-state the claimant's case and is only based on what the claimant told the medical professional, rather than on medical tests or examinations. The note also uses legal language and jargon ("urgent, compelling, and necessitous"), which suggests that the claimant obtained the note for the purpose of obtaining unemployment benefits. All of these aspects of the note detract from its weight and veracity.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning November 13, 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 - April 14, 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](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.

SF/rh