

Claimant was deemed to have quit her job at a hair salon without good cause attributable to the employer, when she hung up on the employer, while being asked why she added 2½ hours to her timecard, and left the premises. The employer was justifiably frustrated and not unreasonable in calling the claimant a liar during the phone call. The claimant made the changes herself only the day before, yet insisted that she did not know why the timecard was changed.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0021 5467 51

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Leslie Branco, 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 affirm.

The claimant separated from her position with the employer on April 12, 2017. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on May 11, 2017. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on September 15, 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, she 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 obtain additional evidence pertaining to the circumstances of the claimant's separation. Both parties 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 original conclusion that the claimant abruptly resigned without good cause attributable to the employer when she hung up the telephone while the employer was asking her about a timecard issue is supported by substantial and credible evidence and is free from error of law.

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 as a stylist manager for the employer, a hair salon, from 01/20/16 until 04/12/17. The claimant's rate of pay was \$15.00 per hour as a manager and 20% commission over \$300 when she worked as a stylist.
2. On 04/11/17, around 2 p.m., the director of operations called the store where the claimant was working and was told that the claimant had left for the day.
3. On 04/11/17, after leaving the salon, the claimant got a call from the receptionist to see if she could fix an error made on 2 other employees' time cards.
4. The claimant told her that she would take care of it tomorrow.
5. On 04/12/17, the claimant fixed the other employees' time cards and then changed her punch out time on 04/11/17 from 2 p.m. to 4:30 p.m.
6. On 04/12/17, the director of operations noticed that the claimant had changed her time card.
7. On 04/12/17, the president and director of operations called the claimant to discuss her changing her time card because they knew she wasn't in the salon after 2 based on their phone call.
8. The director of operations asked the claimant why her time card had been changed the day before. The claimant started to explain about the other 2 employees' time cards and was again asked why her time card had been changed. The claimant insisted that she didn't know. The claimant didn't offer any explanation as to why her time card had been changed.
9. The director of operations became upset based on the claimant's response and told the claimant that she was a liar and had to know how or why her time card had been changed.
10. The claimant became defensive and proceeded to hang up on the employer before the conversation was finished.
11. The employer tried unsuccessfully to call the claimant back in an effort to finish the conversation.
12. Another employee of the salon called the employer and told them that the claimant stormed out of the store and said "I don't need this shit."

13. The director of operations drove down to the salon to see if the claimant was still there to finish the conversation. The claimant was not at the salon.
14. The employer believed that the claimant had quit her job.
15. A few days later, the director of operations received a text message from the claimant asking if she could come back.
16. The employer offered the claimant employment as a full time stylist manager. Her compensation would be different. The claimant's hourly pay was going to be less but the percentage of commission was going to be higher.
17. The claimant did not accept the employer's offer of employment.

Credibility Assessment:

At the initial hearing, which the claimant did not attend, the employer testified that the claimant walked off the job after being questioned about why her time card had been changed from 2 p.m. to 4:30 p.m. on 04/11/17. The employer testified that the claimant repeatedly said that she didn't know why her time card had been changed. The claimant hung up on the employer before the conversation was finished and picked up her stuff and left the salon.

At the remand hearing, which both parties [attended], the claimant testified that on 04/11/17 she did punch out at 2 p.m. because that is when she physically left the salon. The claimant went on to testify that on 04/11/17, her [sic] and another employee went out to seek donations for a fundraising event that was going to be held at the salon. The claimant testified that she and the other employee spent about 2 and a ½ hours going to businesses and asking for donations and that is why she changed her time card the following day to a 4:30 p.m. punch out time.

However, when the claimant was asked by the employer about why she had changed her time card specifically, the claimant never mentioned the fact that she was out fundraising for an upcoming event during the conversation. The claimant testified that she didn't tell the employer about the fundraising because the employer called her a liar, a thief and a cheat at the very beginning of the phone call and she became upset and nervous. The claimant also testified that the employer told her that "her services were no longer needed" and then she hung up the phone. Both of the employer witnesses were on the phone with the claimant for the 04/12/17 conversation. The primary witness testified that she did in fact call the claimant a "liar" but that was after she became frustrated by the claimant repeatedly saying that she did not know how her time card had been changed which was not reasonable. Both witnesses deny that the claimant was told that "her services were no longer needed." Further, it is found that the employer driving to the salon in an attempt to finish the conversation with the claimant makes it more likely they did not tell her that "her services were no longer needed."

Based on the testimony and evidence presented, it is concluded the employer's testimony is more credible.

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. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we also believe that the consolidated findings support the review examiner's legal conclusion that the claimant is ineligible for benefits.

The first question is whether the review examiner's conclusion that the claimant quit her job is supported by substantial evidence. The claimant insisted that the employer told her during the telephone call that her services were no longer needed, inferring that she had been fired. However, the review examiner's credibility assessment makes clear that she adopted the employer's version of what transpired during the phone call. "The review examiner bears '[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony. . . .'" Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). Specifically, the review examiner explained that she believed the employer because after the claimant hung up the phone, the employer tried to call her back, and then the director of operations drove to the claimant's salon to try to finish the conversation. The assessment that such behavior is not consistent with having just fired the claimant is reasonable.

Since the claimant's separation is deemed to be voluntary, we analyze her eligibility for benefits pursuant to 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

In analyzing whether the separation was for good cause attributable to the employer, 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). The express provision of this section of law assigns the burden of proof to the claimant.

In the present case, there was no dispute that the claimant's employment ended when she hung up the phone in the middle of a conversation with the employer, and then left the salon. *See* Consolidated Findings ## 10 and 12. There is also no question that during the call, the employer had been questioning the claimant about why the punch-out time on her time card had been changed from 2:00 p.m. to 4:30 p.m. for April 11, 2017. *See* Consolidated Findings ## 5–8. Before the claimant hung up, the director of operations accused the claimant of being a liar.

Consolidated Finding # 9. We believe the director of operations was justifiably frustrated and upset by the claimant's insistence that she did not know why her time card had been changed, particularly in light of the fact that it was the claimant who made the change and it had only been done the previous day. Under these circumstances, we cannot say that the director of operations' response was unreasonable or that the employer's behavior amounted to good cause for leaving within the meaning of G.L. c. 151A, § 25(e)(1).

We, therefore, conclude as a matter of law that the claimant voluntarily left her employment and that she did so without showing good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the period beginning April 12, 2017, 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 - February 26, 2018



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

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.

AB/rh