

The supervisor's remark to the claimant was rude and thoughtless under the circumstances, but this conduct was not typical of the supervisor and not so egregious that it gave the claimant good cause to quit within the meaning of § 25(e)(1).

**Board of Review
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Issue ID: 0021 7753 46

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by Danielle Etienne, 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 April 13, 2017. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 1, 2017. The employer 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 August 10, 2017. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment with 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 give the employer an opportunity to testify and present other evidence. 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 on appeal is whether the review examiner's conclusion that the claimant voluntarily left employment with good cause attributable to the employer under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the record shows that she quit her employment after one altercation with her supervisor.

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 an orthodontic assistant for the employer, an orthodontist office, from February 8, 2008 until the claimant quit on April 13, 2017.
2. From March 16, 2017, the claimant was medically restricted to work no greater than 8 hours per day due to issues related to her pregnancy. The claimant's work schedule was 8:30am to 5pm, two days per week.
3. On April 13, 2017, the claimant was 8 months pregnant.
4. On April 13, 2017, at about 11am, the claimant was sitting at the front desk waiting to use the bathroom, when one of the dentists, the claimant's Supervisor, while in the presence of coworkers and patients, stated approximately to the claimant: are you going to stand up and work on patients or just sit around all day.
5. The claimant became upset and believed that the Supervisor was ridiculing her.
6. The claimant confronted the Supervisor about how he treated her in the presence of coworkers and patients. The Supervisor walked away and went to lunch.
7. The claimant quit due to being ridiculed by the Supervisor.

Credibility Assessment:

The employer's Orthodontist, the claimant's Supervisor, contends that on the date in question he walked up to the front desk and his entire staff was hanging around and talking, so he said to them, "could you please find something to do and get back to work." He further states that thereafter the claimant said to him that she was not feeling well and asked to go home. He granted the claimant's request.

The employer's second witness, the claimant's coworker, offered contradictory testimony indicating that the Orthodontist did state specifically to the claimant, while the claimant was in a consultation room with her head down, "are we going to sit or are we going to do something". She further offered that the claimant then clocked out and left.

The employer's third witness, the front desk secretary, offered that she does not know whether the Orthodontist stated specifically are you going to stand up and work on patients or sit around all day, but she is aware that the Orthodontist has addressed staff in a similar manner if he sees staff standing around and not working.

The claimant offered that on April 13, 2017, at about 11am, she was sitting waiting to use the bathroom, when one of the dentists, the claimant's Supervisor,

ridiculed her in front of coworkers and patients by stating approximately, “are you going to stand up and work on patients or sit around all day?” At that time, the claimant was 8 months pregnant and on light duty. The claimant further offered that she confronted the Supervisor about how he treated her, but he walked away and went to lunch.

Given the employer’s contradictory and inconsistent testimony about whether the Orthodontist’s statement was made to the claimant specifically or to the entire staff, it is concluded that the claimant’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. However, we conclude that the consolidated findings of fact and the totality of the evidence in the record support a denial of benefits to the claimant.

Since the claimant quit her employment, her qualification 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

After remand, the review examiner found that, on the day the claimant resigned, she was sitting at the front desk waiting to use the bathroom, and, at that time, her supervisor approached her and asked her in front of others whether she was going to stand up and work on patients or just sit around all day. The supervisor’s remark upset the claimant, as she understood that he was ridiculing her. When the claimant confronted the supervisor about his remark, he simply walked away and went to lunch.

When a claimant contends that the separation from employment 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). Although it was reasonable for the claimant to be upset about the supervisor’s comment, it appears from the record before us that this was an isolated incident. While there was testimony from the supervisor and another employee that the supervisor did customarily — and we believe reasonably — tell staff to get back to work when they didn’t appear to be working, there is no indication in the record that it was typical of the supervisor to make such remarks to an employee he knew to be taking a break for a valid reason. Here, the claimant said she sat down because she had to use the restroom, which was occupied at the time, but there is no indication in the record that the supervisor knew why the claimant was sitting down and not working when he

made his remark. Although the better course of action would have been for the supervisor to ask the claimant what she was doing before reprimanding her, his failure to do so is not so egregious that it gives the claimant good cause to quit her employment.

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

The review examiner's decision is reversed. The claimant is denied benefits for the week ending April 15, 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 - January 25, 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.

SVL/rh