Increased work hours during the summer, without more, did not constitute good cause attributable to the employer for resigning pursuant to G.L. c. 151A, § 25(e)(1).

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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by 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 his position with the employer on July 21, 2017. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on June 18, 2018. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on November 20, 2018.

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 accepted the employer's application for review and afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision to award benefits pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and free from error of law, where the review examiner found that the claimant quit after he was given an increased summer workload.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant worked as a full time custodian for the employer, a municipality, between 08/22/2016 and 07/21/2017, when he separated.

2. The claimant worked at a school.

3. The claimant's immediate supervisor was the director of athletics and facilities (director). The claimant's upper level manager was the superintendent of schools for the district (superintendent). The school had an assistant principal (assistant principal) and a principal (principal).

4. The claimant alleged being bullied, verbally abused and sabotaged by other employees between approximately October 2016 and the end of the spring 2017 semester.

5. On an unknown date in late 2016, the claimant raised his allegations to the director. Thereafter, the claimant raised his allegations to the assistant vice principal. Thereafter, the claimant raised his allegations to the principal. The claimant felt as though only the principal was responsive to the claimant's concerns.

6. The claimant did not experience any bulling, verbal abuse, or sabotage during the summer months by any employees. The employees the claimant previously alleged behaving in such a manner towards the claimant were "not really around" the claimant by the summer 2017.

7. The claimant was one (1) of seven (7) custodians assigned to clean the school during the summer 2017. The claimant understood that he and the other custodians were supposed to be working together to clean the school.

8. The claimant and one (1) other custodian (custodian A) were working together to clean the school. The claimant observed other custodians at the school but not performing cleaning tasks. The claimant had an increased summer workload.

9. On an unknown date just before or during summer 2017, the claimant had a meeting with the employer's human resources department. A human resources representative, the claimant, custodian A, and another employee were present during the meeting. The director was not present. During the meeting, the claimant expressed concerns that he and custodian A were doing all the summer work. The claimant did not hear anything further from the employer's human resources department.

10. Following the meeting with human resources, the claimant did not notice any change in his workload during the next few weeks.

11. At some point during the summer, a union steward commented to the claimant that the summer cleaning was "not being done fast enough." The claimant complained to the union steward that only he and custodian A were working.

12. The claimant did not receive any criticism of his work performance in June or July 2017 by the director, the assistant principal, or the principal. The claimant was not issued any written warnings regarding his work performance during the summer months.

13. The claimant did not report any concerns about his summer workload to the director, the assistant principal, the principal, or the superintendent.

14. The claimant did not request a transfer to another location because a transfer was not offered to him. The employer would have explored the possibility of a transfer, had the claimant made such a request.

15. The claimant did not request a leave of absence because he did not know he could.

16. The claimant did not file a union grievance because he did not know how.

17. The claimant took accrued time off after 07/13/2017.

18. On 07/20/2017, the principal called the claimant to ask whether he was returning to work for the employer. The principal requested an answer from the claimant by 07/21/2017 to plan staffing for the remainder of the summer accordingly.

19. On 07/21/2017, the claimant contacted the principal and stated he was not returning to work for the employer.

20. The final incident causing the claimant's resignation on 07/21/2017 was the increased summer workload.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant has carried his burden to show that he is eligible to receive benefits under G.L. c. 151A, § 25(e)(1).

It is undisputed that the claimant resigned his position with the employer. Therefore, G.L. c. 151A, § 25(e)(1) controls the outcome of this case. That section of law 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 provision of law, the claimant has the burden to show that he is eligible for benefits. Following the hearing, the review examiner found that the claimant had carried his burden. We disagree.

At the outset we note several general principles of the legal analysis under G.L. c. 151A, § 25(e)(1). When a claimant contends that 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). However, not every change to an employment relationship, or every employer action which a worker disagrees with or objects to, constitutes good cause to leave the job. It is well-established that general and subjective dissatisfaction with working conditions does not provide 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). On the other hand, "intolerable working conditions [which] has generally been understood to import substandard sanitation, temperature, ventilation, or other like factors which may contribute to the physiological discomfort or demise of exposed employees" constitute good cause for leaving employment. Id. In addition, if a claimant can show that a job has somehow become unsuitable, then good cause for quitting may be found, but, again, not every change to a job will lead to the award of unemployment benefits. *See, e.g.*, Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981) (*substantial* decline in wages may give rise to good cause to resign).

In this case, the claimant offered two main reasons for his resignation: the alleged bullying and mistreatment from his co-workers and the increase in work during the summer of 2017. Regarding the bullying issue, the review examiner specifically found that the claimant did not experience these issues during the summer of 2017, just prior to his resignation. Finding of Fact # 6. As to whether interactions with his co-workers ultimately led to the claimant's resignation on July 21, 2017, the review examiner concluded the following:

> In this case, the claimant asserted that he resigned because of the alleged bullying, verbal abuse, and sabotage between approximately October 2016 and the end of the spring 2017 semester. However, it was undisputed that the claimant did not resign until 07/21/2017, during the summer 2017. Moreover, the claimant admitted during the hearing that he did not experience any bulling, verbal abuse, or sabotage during the summer months by any employees, and that the employees he previously alleged to be behaving in such a manner towards the claimant were "not really around" the claimant by the summer 2017. The claimant further testified that the final incident causing his resignation at the time he resigned on 07/21/2017 was his increased summer workload. As such, it is concluded that the claimant did not resign because of any alleged bullying, verbal abuse or sabotage, and instead resigned (at the time he did) because of his increased summer workload.

With respect to the claimant's allegations of bullying and mistreatment from his co-workers, we think that this conclusion is reasonable in relation to the evidence presented during the hearing.

Thus, the focus of our decision is on the claimant's complaint that he had an increased summer workload.

In reference to the summer workload, the review examiner concluded the following:

> It was undisputed that seven (7) custodians were assigned to clean the school during the months of summer 2017. The claimant offered direct testimony that he and custodian A were the only ones working together to performing cleaning tasks. The claimant also offered direct testimony that this resulted in an increased workload. The claimant's separation from employment due to such an increased workload constitutes good cause attributable to the employer.

We do not agree with this conclusion. We decline to hold that an increased workload, without more, constitutes good cause to quit a position. Nothing in the findings of fact suggests that the employer was disciplining the claimant for failing to complete enough work. Finding of Fact # 12. Nothing in the findings suggests that the claimant was forced to work unreasonable amount of overtime, or was not being appropriately paid for time worked cleaning the school. Nothing in the findings of fact indicates that the increased amount of work caused the claimant mental or physical distress.[1] The claimant testified that his union steward had stated that the cleaning work was not being done fast enough. Finding of Fact # 11. However, such a comment is not attributable to the employer. There was no evidence that the employer told the union steward to relay that message to the claimant.

While we are cautious to speculate, the findings of fact do lead to a conclusion that the claimant was not happy or was frustrated that he and one other custodian were the only ones to be cleaning the school during the summer. He saw that other custodians were in the school, but not cleaning. Finding of Fact # 8. Although he brought up this complaint to the employer on an unknown date, nothing changed. Findings of Fact ## 9 and 10. The decision to quit appears to stem from the fact that he felt that it was not fair or reasonable for the employer to require him to do more work over the summer. His frustration with the situation seems to also be related to the fact that he and one other employee were actively cleaning, whereas other custodians did not seem to be pulling their weight. However, nothing prevented the claimant from doing as much work as he could do, going home, and then returning to work. The other employees' alleged failures to do their assigned tasks did not affect whether the claimant could his own work. As we noted above, the employer lodged no objections as to how the claimant was performing his work during the summer. Moreover, the review examiner's findings appear to explicitly note that the increase in work was for the summer period. Thus, it is not clear at all that the increase in workload was a permanent change to the claimant's employment situation.[2] In light of these considerations, we do not believe that the claimant had a reasonable workplace complaint, and, therefore, did not have a good cause reason to resign his employment.

Moreover, contrary to the conclusion reached by the review examiner, the claimant did not make reasonable efforts to resolve the situation prior to quitting his job. *See* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93-94 (1984). In the present case, the claimant

[1] When asked if he sought medical attention during the summer, the claimant responded, "no."

[2] We cannot say that a temporary change will *never* constitute good cause. It is sufficient here to conclude that what appears to be a temporary increase in summer work was not good cause to quit.

did one thing with regard to the workload to try to keep his job. He complained to a human resources representative on "an unknown date just before or during summer 2017." Finding of Fact # 9. We think that this was insufficient for two reasons. First, the claimant did not bring the issue to the attention of anyone who was directly related to, or who directly supervised, the work he was doing. *See* Findings of Fact ## 3 and 13. It is not clear that the human resources representative would have had the authority to change the claimant's workload. Of course, the representative could have interacted with the claimant's supervisors to reach a solution. But the most reasonable thing for the claimant to have done would have been to speak to his direct supervisor(s) about his complaint. He did not even go to the principal, whom he thought was receptive when he previously had issues with his co-workers. *See* Findings of Fact ## 5 and 13.

Second, the claimant did not know when he reported his concern to the human resources representative. Finding of Fact # 9 is, therefore, vague on this point. If the claimant had spoken to human resources "just before" the summer of 2017, then there possibly would have been an opportunity for the employer to act on his concerns.[3] However, if he spoke with human resources "during the summer" of 2017, then it is unclear if the claimant gave the employer sufficient time to act on his complaint. Testimony during the hearing indicated that the school year ended in late June of 2017. Thus, the claimant performed his summer custodian work for about two to three weeks. Without knowing when he made his complaint, we cannot conclude that the claimant gave the employer a chance to rectify the situation. In these ways, we believe that the claimant has not shown through substantial and credible evidence that he took reasonable steps to preserve his employment.

We, therefore, conclude as a matter of law that the review examiner's decision to award benefits, pursuant to G.L. c. 151A, § 25(e)(1), is not supported by substantial and credible evidence or free from error of law, because the claimant did not show that his increased summer workload was a reasonable workplace complaint constituting good cause to quit or that he made reasonable attempts to preserve his job prior to resigning.

[3] Then again, it is not clear how the claimant would have known the summer situation *before* the start of the summer.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning July 16, 2017, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 29, 2019

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SF/rh