

Claimant, who resigned, was not eligible for benefits because she did not have a reasonable belief that her job was in jeopardy, even if her new supervisor was unfairly evaluating her work.

**Board of Review
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Issue ID: 0023 0477 23

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits following her separation from employment on September 19, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 6, 2017, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on May 5, 2018, the review examiner affirmed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). The Board accepted the claimant's application for review.

Findings of Fact

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

1. The claimant worked for the employer, a charter school, from September 13, 2010 to September 19, 2017 as a part-time School Nurse.
2. Prior to the school year 2015-16, the claimant received good performance evaluations.
3. The claimant received no disciplinary action or a performance improvement plan (PIP).
4. For the school year 2015-16, the employer reorganized administratively making the Nurse Leader the direct evaluator of the claimant.
5. In May of 2016, the Nurse Leader had an informal discussion about the claimant using the computer templates to improve efficiency and about

- improving teamwork in the office. The claimant was not receptive, expressing that she did not see any problems with her speed or teamwork.
6. On June 20, 2016, the Nurse Leader had an informal brief discussion with the claimant regarding performance issues in the purview of others. The claimant felt uncomfortable as a result.
 7. The Nurse Leader was new in her supervisor role and did not understand that such conversations should be held in a more private setting.
 8. The Human Resources Coordinator was unaware of the incident, but would have intervened if known to her. The claimant did not lodge a complaint regarding the incident.
 9. On July 10, 2016, the Nurse Leader contacted the claimant by telephone to discuss performance issues. The Nurse Leader reiterated the need to use computer templates and improve teamwork. The Nurse Leader expressed that the claimant should take on the role of case manager more effectively. The claimant countered that she is faster on the computer and no problems with teamwork exist. The Nurse Leader stated that the claimant and the other Nurse do not seem to problem solve together. The Nurse Leader shared feedback from administration that the claimant lacks motivation to assist and appears uninterested. The claimant argued that it was not true.
 10. On September 9, 2016, the Nurse Leader and claimant met in person to review last school year's performance. The Nurse Leader discussed the same points as on July 10th and the claimant again denied the characterization and generally denied all performance issues raised.
 11. On January 31, 2017, the Nurse Manager published a medication review procedures which was reviewed with employees in March of 2017. The procedures were published to remind staff due to an error that was made. The claimant opined that it was geared towards her though the procedures were generic.
 12. On June 19, 2017, the claimant received a performance evaluation with an overall rating of "minimally effective/needs improvement."
 13. During the summer, the claimant submitted a written response to the evaluation arguing against the points made by the Nurse Leader.
 14. On September 13, 2017, the Nurse Leader issued a "work plan" for the claimant, which included: checking emails twice daily and to timely respond to emails; planning on learning something new every day; read an article relevant to work to improve nursing practice on a weekly basis; carefully review presented medication for accuracy; use computer templates to improve

efficiency; adhere to new field trip procedures that required review of medical needs a week prior to the scheduled trip; improve on case management tasks; work cooperatively with co-nurse; and, be friendly, dynamic and positive.

15. The claimant developed a belief that her job was in jeopardy.
16. The claimant did not seek counseling from human resources despite having a good relationship with the Human Resources Coordinator.
17. The claimant was not at risk of losing her job due to not receiving disciplinary action or being placed on a PIP.
18. The claimant tendered her resignation effective September 19, 2017.
19. The claimant last worked on September 18, 2017.

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, except for the year noted in Finding of Fact # 6, are supported by substantial and credible evidence in the record. As to Finding of Fact # 6, the claimant testified that this incident occurred in 2017. The claimant's testimony about the incident happened while she was testifying about the 2017 evaluation. She testified that she received the 2017 evaluation two days before the end of the school year. She tried to talk with the nurse leader about it, but students were in the nurse leader's office. The claimant took the evaluation home and wrote a response to it. The response is clearly related to the 2017 evaluation. The nurse leader, while giving her testimony about the 2017 evaluation, also indicated that there was some discussion about it in her office, when other people were present. She acknowledged that it probably should have been done in private. Thus, Findings of Fact ## 6 through 8 all refer to events that happened in 2017, after the claimant received her 2017 evaluation.¹ Other than the error with the date, the content of the findings is supported by the record.

This one error with the findings does not alter the result of the case. The review examiner's conclusion that the claimant did not have a reasonable belief that her job was in imminent jeopardy in September of 2017, when she tendered her resignation, is supported by a fair and reasonable view of the evidence before him.

¹ No dates are specifically noted in Findings of Fact ## 7 and 8. However, they clearly refer to the event noted in Finding of Fact # 6 as happening on June 20, 2016.

Therefore, the review examiner's decision is affirmed. The claimant is denied benefits for the week beginning September 17, 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 - July 30, 2018



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