

**Where claimant contends resignation was attributable to the employer for not complying with state laws regarding staff to student ratios, but produced no evidence of such laws, and, where the claimant made no attempt to preserve employment, she is not eligible for benefits under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0023 2912 83**

## **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 her position with the employer on October 15, 2017. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 17, 2018. The claimant 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 April 19, 2018. We accepted the employer's application for review.

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 remanded the case to the review examiner to allow the employer an opportunity to testify and offer other evidence. Only the employer attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant left her employment voluntarily for good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law, where, after remand, the consolidated findings show the claimant never complained to the employer before resigning her position.

### **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 for the instant employer as a Curriculum Coordinator from January 2014 until her separation on 10/15/2017.
2. During the course of the claimant's employment, the employer was occasionally understaffed without enough staff to child ratio due to employees calling out.
3. The claimant never complained to the employer regarding any issues regarding the staff to child ratios.
4. During the summer of 2017, the claimant was dissatisfied that she was passed over by the employer for an Assistant Director position.
5. The claimant was passed over for the position due to the claimant limiting her availability from 8:30am to 2:30[pm] due to having three children.
6. Prior to her separation, the claimant did not approach the President or the Director regarding any issues about child ratios or any other issues.
7. If the President has been made aware of any issues by the claimant prior to resignation, he would have addressed them.
8. The claimant resigned without any prior notice on 10/15/2017 stating in writing that she was dissatisfied with the work situation and the atmosphere had become hostile and indicating that she was afraid to work with the Director.

#### Credibility Assessment:

The testimony of the President and the Director is accepted as credible in all contested areas since the claimant did not appear at the remand hearing, thus leaving the employer without the opportunity to cross examine the testimony produced by the claimant from the original hearing. Furthermore, upon review of the record, the testimony from both employer witnesses was forthright in giving testimony and their version of the events made more logical sense in comparison to the claimant's testimony, thus causing greater weight to be given the employer's testimony.

#### 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. We further believe the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant left employment voluntarily for good cause attributable to the employer.

Because it is undisputed that the claimant quit her employment, her eligibility 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. . . .

Under G.L. c. 151A, § 25(e)(1), it is the claimant's burden to establish that her separation was for good cause attributable to the employer. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

As for the claimant's reason for resigning, the claimant wrote she was dissatisfied with the work situation and the atmosphere had become hostile. *See* Consolidated Finding # 8. When a claimant contends that 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). At the initial hearing, the claimant maintained that, at various times during the course of her employment, she was left in the room with too many children, thereby leaving her out of ratio with state regulations. The claimant testified that she ultimately resigned due to her safety concerns for the children and the employer's failure to correct the problem after she verbally complained to her supervisor. After the remand, the review examiner has found that the employer was occasionally understaffed due to employees calling out. *See* Consolidated Finding # 2. However, because no evidence was presented at either hearing to demonstrate the mandatory staffing ratios under law, we are unable to conclude that this occasional understaffing issue was an unreasonable working condition.

Moreover, the Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's actions also 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 issue as to whether the claimant attempted to preserve her employment was in dispute. Upon hearing testimony from only the claimant at the initial hearing, the review examiner found the claimant had verbally complained to her supervisor about being left in her classroom with too many children.<sup>1</sup> After remand, the review examiner found the claimant never complained to her immediate supervisors regarding staff to child ratios. *See* Consolidated Finding # 2. Ultimately, in his credibility assessment, the review examiner found the employer's testimony more credible in all contested areas. Such credibility assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against*

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<sup>1</sup> *See* Findings of Fact ## 2 and 3 in original decision, Remand Exhibit 1

Discrimination, 423 Mass. 7, 15 (1996). We see no reason to disturb this review examiner's credibility assessment.

Based upon this credibility assessment, the review examiner found the claimant did not complain about the staffing ratios before quitting. The claimant, therefore, has not met her burden of establishing that prior to separating, she undertook a reasonable attempt to preserve her employment or that any such attempt would have been futile. Consequently, the claimant is not eligible for benefits.

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

The review examiner's decision is reversed. The claimant is denied benefits for the week ending 10/13/2017 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 - September 27, 2018**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
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](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.