

A credibility assessment, which was reasonable in relation to the evidence presented, supported findings that the claimant voluntarily left her job to spend more time in her NH home after the employer would not reduce her schedule to 3 days per week. Claimant's separation was neither for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

**Board of Review
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Issue ID: 0023 3061 97

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 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 September 29, 2017. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on December 12, 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 January 27, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left her employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons 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 afford the claimant an opportunity to present 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 before the Board is whether the review examiner's decision, which concluded that the claimant voluntarily resigned from her job because she no longer wished to work the same schedule of hours, and was, therefore, disqualified under G.L. c. 151A, § 25(e)(1), 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 as an Office Manager for the employer, a property management company, from 9/28/15 until she separated from the employer on 9/29/17.
2. The claimant had been hired to work part time, 25 hours a week Monday through Friday, earning \$25.00 an hour.
3. The claimant had left work in order to spend more time at her home in New Hampshire and to pursue other interests.
4. The employer needed the person in the Office Manager's position to work 5 days a week since she was in and out of the office at meetings and needed someone in the office at all times.
5. Around the beginning of April 2017, the claimant approached one of the Owners and informed her that she wanted to work only 3 days a week, Tuesdays, Wednesdays and Thursdays. The Owner told the claimant she would need to speak to the Co-Owner of the business.
6. When the other Owner returned, she was informed by both the claimant and Co-Owner that the claimant only wanted to work 3 days a week so she could have long weekends to spend time at her home in New Hampshire and to pursue other interests.
7. The Owner began looking for candidates to see if she could find someone to work the other two days a week. The claimant continued to work her 5 day schedule as hired while the employer searched for someone to cover the days the claimant was looking to have off.
8. The employer posted ads online and reached out to a staffing agency to see if she could find the appropriate candidate for the job. The employer was unable to find anyone, so she informed the claimant she could not accommodate her request to work three days a week and that she would need to continue working the 5 days a week that she was hired for.
9. The claimant told the employer she did not want to continue working the 5 days. The claimant agreed to train someone to replace her and suggested to the employer that her last day would be 9/30/17.
10. The claimant had been allowed a reduced schedule in the past during the first summer of her employment. She had requested at that time days off to babysit for her son. The employer allowed the claimant the reduced schedule at that time.

11. The employer is very flexible and would have allowed the claimant time off for any doctor's appointments. The claimant never told the employer that the time she was requesting off was for doctor's [sic] appointments.
12. Prior to her leaving, the claimant's job was not in jeopardy. She did not request a leave of absence before quitting.
13. The employer would have had continued work available for the claimant if she had decided to stay on working her 5 day schedule.

Credibility Assessment:

Although the claimant testified that she had requested the time off for doctor's [sic] appointments, her contention is not deemed credible since during the hearing she testified that she only wanted the time off during the summer[;] however she provided further information that the issues she was having with her eyes lasted until January of 2018. In addition, the employer's testimony is deemed more credible than that of the claimant since both employer witnesses, the Owners of the business, provided corroborating testimony that the claimant had asked each of them for time off during the summer to spend time at her home in New Hampshire and to pursue other interests and never indicated to them that the time off requested was for medical reasons.

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 agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The first question presented in this case is whether the claimant resigned voluntarily, as the employer maintained, or was discharged when the employer hired her replacement, as the claimant alleged. The consolidated findings provide that the claimant left her employment voluntarily. In reaching these findings, the review examiner accepted the employer's version of events. "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). Such assessments will not be disturbed unless they are unreasonable in relation to the evidence presented. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). The review examiner explains that she found the employer's testimony more credible because portions of the claimant's testimony did not make sense and because the employer witnesses' testimony was consistent. We think her assessment is reasonable in relation to the evidence presented.

Because the findings show that the claimant left her job voluntarily, her eligibility for benefits must be decided under 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

Another provision under G.L. c. 151A, § 25(e) states:

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

The claimant bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

In order to establish 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). Here, the parties agreed that the claimant asked the employer if she could work three, instead of five, days per week, and that the employer endeavored to look for job candidates who could work the other two days. *See Consolidated Findings ## 5–8.* Whether or not the employer found a qualified candidate who could split the work week, as was debated during the hearing, or simply changed its mind about reducing the claimant's hours, this was the employer's prerogative. It was a reasonable business decision. As such, it did not constitute good cause attributable to the employer to resign within the meaning of G.L. c. 151A, § 25(e)(1).

We also consider whether the facts show that the claimant's separation was due to urgent, compelling, and necessitous circumstances. During the hearing, the claimant testified that in May or June, she sought to reduce her schedule because she was having a medical issue with her eye and wanted to be able to go to see a specialist in [City A] earlier in the day to avoid traffic. However, she continued to work her five day per week schedule through September. Under these circumstances, we do not believe that this medical issue rose to the level of being an urgent, compelling, or necessitous reason to work fewer days per week. It was more a matter of convenience.

We, therefore, conclude as a matter of law that the claimant's separation was voluntary and not due to good cause attributable to the employer. We further conclude that it was not due to urgent, compelling, and necessitous circumstances. The claimant is disqualified under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning September 24, 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 19, 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.

AB/rh