

Where the review examiner's credibility assessment and findings that the claimant resigned her position are supported by the employer's testimony during the hearing, and where the claimant had argued that she was discharged from her position, there is no error in concluding that the claimant should be subject to disqualification under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0024 1950 48

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 December 29, 2017. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on February 2, 2018.¹ 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 March 7, 2018.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, 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 accepted the claimant's application for review and remanded the case to the review examiner to allow the claimant the opportunity to provide 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 is subject to disqualification from the receipt of benefits pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the review examiner has found, based on the disputed testimony of the parties, that the claimant gave her notice to the employer that she would be quitting her job and ultimately did so on December 29, 2017.

¹ The approval was issued pursuant to G.L. c. 151A, § 25(e)(2).

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 as an Assembler for the employer, a manufacturing company, from 8/16/16 to 12/29/17.
2. The claimant's primary language is Spanish.
3. The claimant's supervisor was the Assembly Supervisor. The Assembly Supervisor still works for the employer.
4. On or about 12/15/17, the claimant told the Assembly Supervisor that she resigned from employment, effective 12/29/17.
5. The Assembly Supervisor asked the claimant if she got another job. The claimant did not answer.
6. The claimant did not provide the Assembly Supervisor with a reason for her resignation.
7. The Assembly Supervisor asked the claimant if there was anything he could do to change her mind. The claimant said, "No."
8. The claimant's position was not in jeopardy before she resigned from her employment.
9. The Assembly Supervisor told the claimant he would inform the Human Resources Manager and her last day of work would be 12/29/17.
10. On 12/20/17, the Assembly Supervisor e-mailed the Human Resources Manager and informed her that the claimant gave notice of her resignation from employment, and her last day would be 12/29/17.
11. The Human Resources Manager called the Assembly Supervisor after she received the e-mail and asked if he asked the claimant to stay. The Assembly Supervisor said he asked if there was anything he could do to make her change her mind, and the claimant said, "No."
12. The employer's business was closed on 12/25/17 and 12/26/17. The claimant worked a partial day, due to illness, on 12/27/17. She called out sick on 12/28/17.

13. On 12/29/17, the claimant asked the Assembly Supervisor if she could leave work early, as she was ill. The Assembly Supervisor contacted the Human Resources Manager about this, as it was the claimant's last day of work.
14. The Human Resources Manager said it would be fine for the claimant to leave early. She gave the Assembly Supervisor documents containing information about continuation of life insurance benefits and information about unemployment insurance to give to the claimant, as the employer is legally required to do so when an employee separates from employment.
15. The claimant did not receive information about continuation of other benefits, such as health insurance benefits, as she did not receive additional benefits through the employer.
16. The Assembly Supervisor met with the claimant and gave her the documents containing the above information.
17. The claimant said she could work an additional week for the employer, and the Assembly Supervisor said that was not necessary. The claimant did not inform the Assembly Supervisor that she wanted to extend her notice period until her last day of work.
18. The claimant received her last paycheck according to employer's regular pay schedule. She did not receive her last paycheck on her last day of work.

Credibility Assessment:

Both parties provided conflicting evidence regarding the events leading to the claimant's separation from employment. The evidence presented by the employer was more credible than the evidence presented by the claimant. The claimant attended the remand hearing. She provided no additional witnesses or documents to supplement her testimony. The Assembly Supervisor, who was a direct witness to these events, attended the remand hearing and said, under oath, that the claimant resigned and gave two weeks' notice of her separation. He told the claimant he would inform the Human Resources Manager about this. He did so, as he e-mailed the Human Resources Manager on 12/20/17 and said that the claimant resigned effective 12/29/17. The Human Resources Manager, alone, testified at the initial hearing and her testimony was consistent with the testimony of the Assembly Supervisor. She also provided the 12/20/17 e-mail at the initial hearing. The claimant stated that she was discharged from employment for asking to leave early on 12/29/17, due to illness. Both parties agree that the claimant's job was not in jeopardy before her separation from employment. The claimant was absent from work and left early due to illness the two days prior to 12/29/17, and she was not disciplined for this. It does not make sense that the employer would suddenly terminate the claimant's employment for asking to leave work early on 12/29/17, if her job was not in jeopardy before that. The claimant received a packet from the Assembly Supervisor on 12/29/17, which included

information about unemployment insurance benefits. It did not include the claimant's last paycheck. The claimant was paid according to the employer's regular pay schedule, as she gave prior notice that she was resigning from her employment.

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 that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we believe that the review examiner's conclusion that the claimant is subject to disqualification is free from error of law.

The major underlying dispute in this matter is whether the claimant was discharged from her position or whether she resigned her job. The testimony from the hearings is recounted in the review examiner's credibility assessment. Therefore, we need not summarize it here in detail.² It is sufficient for us to note that the claimant argued that she was discharged on December 29, 2017, after she had called out sick on December 28 and went home early on December 27. The employer offered testimony that the claimant gave her notice on December 15 that December 29 would be her last day. The review examiner's consolidated findings of fact clearly credit the employer's version of events. We agree with the review examiner that a discharge on December 29 would have been unlikely, given the claimant's work history. The two employer witnesses also gave very specific testimony about interactions they had with the claimant regarding her resignation. The claimant denied that any such interactions took place. There is no reason noted in the record as to why both witnesses would lie about their interactions with the claimant. Thus, the substantial and credible evidence before us is that the claimant resigned her position, effective December 29, 2017.

Since we conclude the claimant quit her employment, we analyze her eligibility for benefits under G.L. c. 151A, § 25(e), 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 . . . [or] if such individual established 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.

² As noted above, we have accepted the review examiner's findings of fact. Similarly, we accept the credibility assessment as being supported by a fair view of the evidence. "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).

Under these statutory provisions, the claimant has the burden to show that she is eligible to receive unemployment benefits. As noted above, the claimant argued that she was discharged from her position. The review examiner found that the claimant did not give her supervisor any reason for her resignation. Consolidated Finding of Fact # 6. Although the claimant was apparently ill during the few days prior to her separation, no evidence was offered to show that a medical condition forced the claimant to resign involuntarily. The claimant, therefore, has not shown that she is eligible to receive unemployment benefits.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and free from error of law, because the claimant has not carried her burden to show that she separated from her job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning December 31, 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 - June 29, 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.