

Board affirms the denial of benefits under § 25(e)(1), where the claimant left her job because she did not like the proposed modifications to her work duties, and failed to make a reasonable attempt to preserve her employment despite the employer's attempts to work with the claimant to keep her employed.

**Board of Review
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Issue ID: 0024 5203 26

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 resigned from her position with the employer by letter dated January 16, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 17, 2018. The claimant 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 denied benefits in a decision rendered on May 9, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined 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). 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 provide additional evidence regarding the modifications to the claimant's job duties. Both parties 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant quit her employment without good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law, where, following remand, the findings indicate the claimant quit due to job modifications which had been neither finalized nor implemented.

Findings of Fact

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

1. The claimant worked as a Director of Diversity Outreach and Inclusion for the employer, a mental illness advocacy group. The claimant began work for the employer in September 2014.
2. The employer is a state-wide nonprofit education, support and advocacy organization based in [Town A], MA. They have 21 affiliate agencies located in communities in Massachusetts. They have a membership that includes individuals living with mental illness, family members and providers.
3. The claimant worked Monday, Tuesday and Wednesday from 10 am to 6 pm. She worked other days including some weekends when she traveled to advocacy events. She earned \$30 per hour.
4. The claimant was hired by the Executive Director (ED). When she was hired, she reported directly to him.
5. Before December, 2017, the claimant's job duties were to increase awareness of the employer's programs in diverse communities in Massachusetts. She did this by making presentations at affiliates and health care agencies. She also worked with the directors of affiliates and other providers to increase awareness of mental health issues and the employer. She worked to ensure diverse groups received access and inclusion in the employer's programs and services.
6. The claimant's duties also included providing diversity training and support to staff, the employer's Board of Directors, affiliates and community partners.
7. The claimant lives in [Town B], MA. The employer allowed the claimant to work from home. It was her practice to work from home on Monday and Tuesday, and work from the [Town A] office on Wednesday.
8. The claimant began outreach to affiliates and groups in [Town C], [Town D], [Town E] and other diverse communities. She began a relationship with an African American sorority. She brought representatives from these groups to the employer. She brought an African American man from an affiliate to the employer to volunteer for her. She also sent staff to affiliates located in minority neighborhoods for training.
9. The ED counseled the claimant that staff were not comfortable with the volunteer. He told her that staff were also not comfortable going to minority neighborhoods. The claimant and the ED disagreed about this issue. As the claimant continued to work at the employer, the ED became more receptive to her ideas.
10. In 2017, the ED retired. A colleague who was a manager became the Acting Executive Director.

11. After the ED left, the claimant began to feel as though she was working on her own.
12. In July, 2017, the claimant began working as the Executive Director at [Employer A]. She worked there part-time until the end of December 2017. She left voluntarily because she had too much work.
13. In November, 2017, the employer hired a new ED. The claimant continued to report to the manager who had been the Acting ED.
14. In December, 2017, the employer restructured. The ED told the claimant her new supervisor would be the Affiliate Development Director. She told him that he needed some assistance with a grant application for the [Town F] affiliate.
15. The grant for the [Town F] affiliate was completed.
16. The new ED and the Affiliate Development Director met with the claimant. They discussed progress she had made throughout the state. They suggested there was not as much progress in [City A]. They told her they wanted her to focus her work on the three [City A] affiliates including [Town C], [Town D] and [Town E].
17. The claimant was concerned that working with the [City A] affiliates would require her to travel to [City A] two days each week. She complained about a lack of travel reimbursement. The ED told her she was being reimbursed in accordance with the employer's policies.
18. The claimant was also concerned with the directors at the [City A] affiliates because they were all volunteers. She was concerned they would not have time to work with her. She was concerned she would have to do more work. She told the ED and the Affiliate Development Director about these concerns.
19. The ED and the Affiliate Development Director asked the claimant to define some specific goals in working with the communities.
20. From Tuesday, December 19, 2017, to Tuesday, January 2, 2018, the claimant either took vacation or called out sick.
21. The claimant worked eight hours on Wednesday, January 3, 2018.
22. The claimant was also concerned that the modification of her duties would prevent her from visiting affiliates she enjoyed working with. She had an event scheduled with one of these affiliates, a Martin Luther King, Jr. event, scheduled for Saturday, January 13, 2018.

23. The claimant discussed the Martin Luther King, Jr. event with the manager who had been the interim ED. The manager told her it was not necessary for her to attend the event.
24. From Monday, January 8, 2018, to Wednesday, January 10, 2018, the claimant did not work because she was ill.
25. On Tuesday, January 9, 2018, the Affiliate Development Director and the claimant spoke on the phone. The Affiliate Development Director proposed some goals in working with the [City A] affiliates. He also suggested they have weekly conference calls. There was no final decision made about the goals or the weekly meetings.
26. On Wednesday, January 10, 2018, the claimant participated in a staff meeting by telephone.
27. On Thursday, January 11, 2018, the claimant emailed the Affiliate Development Director. In her email she complained about speaking on the phone and attending a staff meeting while she was out sick. She complained about the employer's decision to cancel her participation in the Martin Luther King, Jr. event. She stated the affiliate will be disappointed. She stated there were better ways of handling the employer's financial concerns.
28. The Affiliate Development Director responded to the claimant's email. He states: "Let us start again." He asked her for her work schedule including times she was in the office. He asked when she would return to work. He asked if she was willing to meet once each week to discuss tasks she was working on. He asked if she was willing to accept the goals he had proposed. He asked about other work she was doing. He told her he had no knowledge of the Martin Luther King event planning.
29. In concentrating her work with the [City A] affiliates, the employer did not give the claimant new duties. The employer did modify the claimant's already existing duties with instruction she concentrate her outreach and inclusion work in [Town C], [Town D] and [Town E].
30. The modified duties would have required the claimant to spend more time in [City A], and therefore increase the amount of time she spent commuting.
31. The modified duties would have increased the amount of work the claimant had.
32. The claimant's goals and duties were not finalized.
33. The claimant participated in the affiliate's Martin Luther King, Jr event on Saturday, January 13, 2018. She did not inform the employer of her participation or include her participation on her timesheet.

34. On Tuesday, January 16, 2018, the claimant sent a letter of resignation to the ED. She states in her letter that her position was weakened by no longer reporting directly to the ED and her feeling “double team(ed)” by the ED and the Affiliate Development Director. She also complained that the new expectations significantly increased her workload.
35. The claimant was referring to the employer’s request she work with the Boston affiliates when she referred to the “new expectations.”
36. The ED accepted her resignation.

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 ultimate 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 conclude that the review examiner’s decision disqualifying the claimant from receiving benefits is supported by the record and is reasonable in relation to the evidence presented.

The review examiner denied the claimant benefits after analyzing the claimant’s separation 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 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 she left work for good cause attributable to the employer. After the initial hearing, the review examiner concluded that the claimant had not met her burden. We remanded the case for additional testimony on the circumstances of the claimant’s separation. Following remand, we reach the conclusion that the claimant did not meet her burden.

In the consolidated findings of fact, the review examiner found that the claimant was concerned that her new assignments to the employer’s [City A] affiliates would require her to travel to [City A] more often. She complained about a lack of travel reimbursement. She was also concerned that because all the directors of the [City A] affiliates were volunteers, they would not have time to work with her, and that she would be required to do additional work. She expressed her concerns to the Executive Director and the Affiliate Development Director. In response, they asked the claimant to define some specific goals in working with the [City A] communities, and suggested weekly conferences, but no final decision was reached. The review examiner’s findings indicate that the claimant was out on vacation or sick from December 19, 2017, to

January 2, 2017, worked a full day on January 3, 2017, and worked somewhat sporadically thereafter, if at all. After receiving a complaining email from the claimant on January 11, 2018, the Affiliate Development Director responded, "Let us start again." He asked her some questions about her work schedule, when she would return to work, would she meet once a week, and if she was willing to accept the goals which he proposed. There is no evidence of a response from the claimant.

The review examiner found that the modified duties would have increased the amount of work the claimant had. However, he also found that the goals and duties had not been finalized. While the claimant may have had her reasons to be dissatisfied with the prospect of changes to her job, she resigned before her job responsibilities had actually changed. Thus, the claimant has not shown that, at the time of separation, she had good cause to voluntarily leave her employment. *See Sohler v. Dir. of Division of Employment Security*, 399 Mass. 785 (1979) (mere job dissatisfaction, without more, does not constitute good cause for leaving employment).

Moreover, the Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action 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. Director of Division of Employment Security*, 393 Mass. 89, 93-94 (1984). On January 16, 2018, the claimant sent the employer a resignation letter in which she complained that the employer's new expectations significantly increased her workload, and that her position had been weakened by no longer reporting to the Executive Director. The record before us further shows that the employer made an effort to respond to the claimant's concerns in an email from the Affiliate Development Director. Despite this effort, the claimant resigned without any attempt to discuss her issues with the Affiliate Development Director. Under these circumstances, the claimant did not make reasonable efforts to preserve her employment.

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

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending January 19, 2018, 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 - October 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.

SPE/rh