Chairperson's email with strongly worded criticism of claimant's work did not create good cause attributable to the employer to resign.

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Issue ID: 0024 7559 88

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 February 19, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On May 18, 2018, 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 August 4, 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 accepts the claimant's application for review.

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 are based upon substantial and credible evidence in the record.

As to the review examiner's legal conclusions regarding the claimant's eligibility for unemployment benefits, we agree that the claimant is subject to disqualification under G.L. c. 151A, § 25(e)(1). However, we reach that conclusion for reasons which differ from those offered by the review examiner.

In order for the claimant to carry her burden under G.L. c. 151A, § 25(e)(1), she must show that she had a reasonable workplace complaint. The complaint forms the basis of the "good cause" to quit. The review examiner found and concluded that the claimant quit her position due to the receipt of the February 14, 2018, e-mail. Based on the claimant's testimony, the receipt of the e-mail certainly played a part in her decision to quit. Although the review examiner concluded that the e-mail was unreasonable, we disagree. The reasonableness of the Chairperson's action in sending the e-mail, and of the claimant's response to it, is a question of law. *See* Ducharme v. Comm'r of Department of Employment and Training, 49 Mass. App. Ct. 206, 208 (2000). "Application of law to fact has long been a matter entrusted to the informed judgment of the

board of review." Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979). The e-mail at issue talks strictly about work-related matters. It does not denigrate, insult, or unduly criticize the claimant. The language used, while pointed, frank, and strong, is reasonable and professional, as opposed to profane or derogatory. The e-mail references several items, which would appear to have been within the claimant's job description as an administrative assistant or secretary, including checking to ensure that proper copies were made of the reports, making phone calls, and sending out paperwork (including notices and attendance sheets). Clearly, the claimant felt insulted by the e-mail, *see* Finding of Fact # 10, but it was not unreasonable for the Chairperson to e-mail the claimant if the claimant did not perform her job duties satisfactorily. It is unclear why the review examiner concluded that the e-mail was unreasonable, but it is perhaps because the claimant actually did put the reports into the children's backpacks. *See* Finding of Fact # 11. However, simply because the claimant did this does not mean that the e-mail is unfounded or unreasonable, especially where the e-mail specifically refers to the reports, which went home with the children incorrectly copied. We do not believe that this e-mail created good cause for the claimant to resign her position.

The review examiner's findings and discussion clearly focus on the February 14, 2018, e-mail. Indeed, the claimant testified that she would not have quit but for the sending and her receipt of the e-mail. However, she eventually testified to this after the review examiner sought to pin the resignation on one thing, the "final straw," or the final incident prior to the separation. The clear import of the claimant's testimony was that she felt that she was not the right fit for the new position, given her background. She essentially was arguing that the job was not suitable for her.

In determining the suitability of a job, many factors are to be considered, including whether the job is one for which she is reasonably fitted by training and experience. *See* G.L. c. 151A, § 25(c). The evidence in the record is that the claimant was hired to be an administrative assistant, and the position at issue, which she began on January 16, 2018, was also as an administrative assistant.[1] *See* Findings of Fact ## 2 and 4. Nothing in the record indicates that the claimant's pay or hours were reduced. *See* Graves v. Dir. of Division of Unemployment Assistance, 384 Mass. 766 (1981). The claimant testified that she had never before worked in a school setting or had experience in special education. We do not think that either of these aspects of the new position rendered it unsuitable. Given her prior work history and skills, *see* Exhibit # 15, we do not think that learning new things in the secretary or administrative assistant role was beyond her capabilities. The basic type of work was the same.

Moreover, the evidence in the record suggests that she did not give the new position a reasonable trial period prior to deciding that the job was not suitable for her. *See* Jacobsen v. Dir. of Division of Unemployment Assistance, 383 Mass. 879 (1981). After one day of working in the new role, the claimant was already complaining that the job was not for her. *See* Exhibit # 9, p. 2. Determining that the job was not for her after one full day of work suggests that the claimant

[1] There was some dispute about the title of the new position. The claimant argued that the title was "secretary," while the employer's witness indicated that the new position was as an administrative assistant. *Compare* Exhibit # 6 *with* Exhibit # 8. We think that the difference in title is immaterial. The type of work which the claimant was doing, which included administrative and support tasks, would have been similar.

was not truly giving an effort to acclimate or learn new things.[2] Although she waited until February 19, 2018, to resign, we think it was reasonable for the claimant to give the job more time, especially where she had done administrative work in the past. Had the job been totally different from any prior work she had done, for example, if she was trying out a new job as a salesperson or mechanic, then she quickly may have realized that the job was not suitable. But here, where the work was similar to prior work she has done (even if the setting was different), she has extensive administrative experience, she was encouraged to ask questions and keep at it (*see* Exhibit # 9, p. 3), and it does not appear that any formal discipline had been issued to her, we think that the claimant's decision to quit when she did was premature and not reasonable.

Consequently, the claimant has not carried her burden to show that she is eligible to receive benefits, pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning February 18, 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 - September 5, 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

[2] The e-mails to the employer about the new position might be considered a form of job preservation. However, because we have concluded that the claimant did not have good cause to resign, and because we have concluded that the job was suitable for her, the efforts do not alter our conclusion or merit further discussion.

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