

**A claimant, who quit his job because the employer changed the date of his vacation accrual from July to December without any other changes to the employment relationship, did not quit for good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0025 9122 99**

## **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 his position with the employer, effective June 14, 2018. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 4, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on September 14, 2018.

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 accepted the claimant's application for review and remanded the case to the review examiner to make subsidiary findings of fact from the record regarding the reasons for the claimant's resignation from employment. 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 was disqualified from receiving unemployment 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 claimant separated from his job due to a change in when he accrued his annual vacation time.

### **Findings of Fact**

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

1. The claimant worked full-time for the employer, a debt collection company, from 12/1/99 to 6/14/18.
2. The claimant worked as a Debt Collector for approximately seven years before he became an IT Manager.
3. The claimant does not recall what his rate of pay was when he started working for the instant employer.
4. The claimant's supervisor, when he worked as an IT Manager, was the Director of IT Operations.
5. The current Owner purchased the company on 7/1/15.
6. The current Owner informed employees they would receive the vacation time they accrued prior to him purchasing the company, but would receive no additional vacation pay for one year after he purchased the company.
7. The claimant received a raise of an additional \$1 per hour a number of months before the current Owner purchased the company, after his health insurance premiums increased by \$40 per week.
8. Sometime in early 2017, the claimant asked the Chief Operating Officer (COO) for a raise. The COO told the claimant there was no money available for raises at that time.
9. In December 2017, Director of IT Operations told the claimant he would talk to the COO and attempt to get the claimant a raise.
10. The claimant spoke with the Director of IT Operations about this request sometime after the above conversation, and the Director of IT Operations told the claimant he would not get a raise at that time.
11. On 5/21/18, the Human Resources Director told the claimant that he would receive his annual vacation time on 12/1/18, and he had 107 hours of vacation time left until 12/1/18.
12. The claimant received four weeks' annual vacation time, on 7/1/17. He expected to receive four weeks' annual vacation time on 7/1/18, before he received the 5/21/18 e-mail from the Human Resources Director.
13. The claimant used 105 hours of vacation time between 7/1/17 and 5/21/18, and had 55 hours of vacation time left until 12/1/18.
14. On 6/11/18, the claimant met with the COO and the Director of IT Operations, per his request, and the COO told the claimant that he would receive four weeks' annual vacation time on 12/1/18.

15. On 6/13/18, the claimant told the COO that he resigned his position effective 6/14/18.
16. The claimant spoke with someone who works for another debt collection company who said he could possibly get the claimant a job as a Debt Collector. No rate of pay was discussed for the Debt Collector position.
17. The claimant did not provide the date of the above conversation with the person who works for another debt collection company.
18. The above person who works for another debt collection company was unsure of whether there were available positions in that company's IT department.
19. The claimant did not pursue a possible Debt Collector position with this other debt collection company, because he wanted to pursue an IT position.
20. The claimant believes he would not have resigned from his position as IT Manager if the employer made no changes to the date he was to receive his annual vacation time; but he would have continued to request compensation that he believes he would not have received.

### 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 affirm the review examiner's conclusion that the claimant did not have good cause attributable to the employer for quitting his position.

Because it is undisputed that the claimant voluntarily resigned from employment, his eligibility for benefits must be decided pursuant to 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 this section of law, the claimant has the burden to show that he is eligible to receive unemployment benefits. The review examiner concluded that he had not carried his burden, and, following our review of the entire record, we agree.

The final incident prior to the claimant resigning his job was a change in when he would receive his four weeks of vacation time.<sup>1</sup> Prior to 2018, the claimant had received his yearly vacation time on July 1, 2018. On May 21, 2018, the employer informed the claimant that he would receive four weeks of vacation time on December 1, 2018, which would coincide with his anniversary date of hire. The claimant was not happy with this. At a meeting on June 11, 2018, it was confirmed that he would receive his vacation time on December 1, 2018. He submitted his resignation on June 13, 2018, to be effective June 14, 2018.

We note that the amount of vacation time the claimant was to receive on December 1, 2018, was not any less than what he had been entitled to in 2017. The employer was not cutting the amount of vacation time; it was simply changing the date of accrual. The claimant suggested during the hearing that this meant that the four weeks given to him in 2017 was actually for seventeen months of work, rather than twelve. It is true that the four weeks needed to be spread out over a longer period of time. But, this would have happened only once. The amount of overall compensation, four weeks of vacation, was not being reduced.

The claimant has not shown a substantial change to his employment relationship with the employer. *See Graves v. Dir. of Division of Employment Security*, 384 Mass. 766, 767–768 (1981). He was not forced to work in intolerable working conditions. *See Sohler v. Dir. of Division of Employment Security*, 377 Mass. 785, 789 (1979). His disagreement with the vacation time accrual amounts to job dissatisfaction and disappointment, neither of which constitutes good cause attributable to the employer. *Id.* In short, we agree with the review examiner’s original conclusion that the claimant “did not show that he resigned due to action or inaction by his employer that made his position unsuitable.”

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 did not show that his reason for leaving his job, the change to when he accrued his vacation time, constituted good cause attributable to the employer.<sup>2</sup>

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<sup>1</sup> During the hearing, the claimant mentioned dissatisfaction with his pay rate. The review examiner did not find that he was ever promised a pay raise. *See Consolidated Findings of Fact ## 8–10.* Therefore, the pay issue did not create good cause to resign. Moreover, the claimant testified that he would have stayed in the job if the issue with the vacation accrual had been sorted out. *See Consolidated Finding of Fact # 20.*

<sup>2</sup> The claimant offered some testimony that he was looking for another job, or that he quit to take a job elsewhere. If the claimant had quit his job for a new, permanent, full-time job, he may not be subject to disqualification under G.L. c. 151A, § 25(e). However, there was no offer of new work to the claimant prior to his separation. *See Consolidated Findings of Fact ## 16–18.*

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning June 10, 2018, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – November 20, 2018**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. 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](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.

SF/rh