

A claimant, who resigned her position because she wanted to be with her boyfriend in Texas rather than because she was dealing with the effects and circumstances surrounding domestic violence, is subject to disqualification under G.L. c. 151A, § 25(e)(1).

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0025 9710 30

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 effective June 15, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 12, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant,¹ the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 1, 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. 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 resigned her position to move to Texas to be with her boyfriend, thus subjecting her to disqualification 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 findings of fact are set forth below in their entirety:

¹ In Part III of the decision, the review examiner stated that "[b]oth parties participated in this telephone hearing." In fact, only the claimant participated. This error does not affect our disposition of this case.

1. Beginning in 2003, the claimant worked full-time as a director of finance for the employer, a state agency. The employer's deputy treasurer (supervisor) supervised the claimant. The claimant worked until June 15, 2018, when she resigned her position.
2. In 2011, the claimant's boyfriend broke into her house. The claimant issued a restraining order with the court against her boyfriend.
3. Sometime in 2012, the claimant's restraining order expired. The claimant did not renew the restraining order. At some point after the restraining order, the claimant dated that boyfriend again.
4. In 2013, the claimant broke up with her boyfriend.
5. Beginning in October 2015, the claimant worked part-time as a unit coordinator for another employer, a medical facility. The claimant worked until June 30, 2018, when she resigned her position.
6. In approximately March 2018, the claimant saw her ex-boyfriend at the public train station in downtown [City A].
7. The claimant did not see her ex-boyfriend again after seeing him at the train station.
8. On June 4, 2018, the claimant gave her resignation notice with an effective date of June 15, 2018.
9. On June 15, 2018, the claimant resigned her position to move to Texas to live with her new boyfriend.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 2, which states that "the claimant's boyfriend broke into her house." No testimony was given during this hearing to support such a finding. However, we do accept the other portions of Finding of Fact # 2, including the year noted and the fact that a restraining order was issued against the boyfriend. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we affirm the review examiner's conclusion that the claimant quit to move to Texas to be with her new boyfriend, rather than to address the alleged effects of domestic violence.

In Part III of the decision, the review examiner correctly noted the central factual issue to be decided in this case: did the claimant quit due to a desire to be with her new boyfriend in Texas (which would result in disqualification from the receipt of benefits), or did she quit her position

primarily because she needed to address the effects of domestic violence in her life (which would be a non-disqualifying circumstance)? G.L. c. 151A, § 25(e), 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

The seventh paragraph of G.L. c. 151A, § 25(e) further provides that “[an] individual shall not be disqualified from receiving benefits under this clause if the individual establishes to the satisfaction of the commissioner that the reason for the individual’s leaving work was due to domestic violence.” Finally, the last paragraph under G.L. c. 151A, § 25(e), states that an individual is not eligible for benefits “after having left work to accompany or join one’s spouse or another person at a new locality.” The review examiner concluded that the claimant quit to move to Texas to be with her boyfriend. We think that such a conclusion is reasonably supported by the record.²

In her appeal, the claimant argues that Finding of Fact # 7 is unsupported by the record. However, we believe that it is. During the hearing, the review examiner asked the claimant when the last time she saw the ex-boyfriend was. The claimant testified that it was earlier in 2018, around March or April, at the [Station A] train station. Later, when asked if there was a final incident which led to her decision to quit, the claimant testified that the ex-boyfriend was “popping” up on a train platform where she lived and showing up at her other place of employment. Given the prior testimony that the last time she saw him was in March or April of 2018, the review examiner could reasonably have interpreted the later testimony to refer to the period of time prior to, or around, March or April of 2018.

As to whether the separation is attributable to a domestic violence situation, we note that the claimant had not had a restraining order against the ex-boyfriend since approximately 2012, the claimant testified that she did not contact the police around the time in 2018 when she quit her position,³ the claimant last saw the ex-boyfriend several months prior to when she gave her notice of resignation, and the claimant testified initially during the hearing that she quit her job so that she could move to Texas to be with her boyfriend. We further note that, in her initial adjudication statement to the agency, the claimant mentioned nothing about domestic violence or her ex-boyfriend. Indeed, when given the opportunity to provide any other information for the DUA to consider, the claimant wrote only, “[a]lso no family here in Massachusetts.” See Exh. 2, p. 7. Such a statement suggests that the claimant was alone in Massachusetts and wanted to be in

² The review examiner’s findings and conclusions clearly do not credit the claimant’s testimony that she quit her position mainly due to the issue of domestic violence. The reason why the claimant quit was a factual one, and several pieces of evidence in the record support the review examiner’s view of the case. Thus, any credibility assessment made by the review examiner was reasonable in relation to the evidence presented. Therefore, the main findings and conclusions will not be disturbed. See School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996).

³ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

Texas with her boyfriend, and that the primary factor behind the move was not that she was fearing her ex-boyfriend nor that she desired to quit due to the need to address domestic violence issues.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits under G.L. c. 151A, § 25(e), is based on substantial and credible evidence in the record and free from error of law, because the review examiner's conclusion that the claimant quit her position to move to Texas to be with her boyfriend was reasonable in relation to the totality of the evidence presented.

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 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 - November 6, 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.

SF/rh