

The claimant had good cause to quit, as her personal and work items were being disturbed or damaged while on school property, and the employer was unable to resolve the situation. The claimant took reasonable steps to preserve her employment by complaining to the vice principal several times prior to quitting.

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Issue ID: 0026 1292 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 reverse.

The claimant resigned from her position with the employer on April 13, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 25, 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 October 6, 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the employer responded. 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 ineligible for benefits for voluntarily leaving employment without attempting to preserve her employment, is supported by substantial and credible evidence and is free from error of law, where the findings show that the claimant made several complaints to the vice principal about her concerns for her safety in the school after a string of incidents involving her office and car, and her fear that a student's mother was threatening her employment.

Findings of Fact

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

1. The claimant worked as a full-time Transition and Vocational Specialist for the employer, a town school district, from 08/28/17 until 04/13/18. The claimant's annual salary was approximately \$62,000.
2. In early January 2018, the claimant left work and went home and discovered her bag appeared to be "rifled through."
3. The claimant kept her bag in a locked desk drawer in her locked office during her work hours.
4. The claimant reported the incident to the employer; the Vice Principal (VP) told the claimant he would review the surveillance video from the camera in the hallway outside her office.
5. On 01/08/18, a special education student ("Student A") emailed the claimant soliciting money. The claimant reported the email request to her supervisor to "protect [herself] professionally, responsibly, and legally."
6. After she reported the student's email, the liaison advised the claimant she "should have kept it to [herself]."
7. Subsequently, the [sic] Student A's demeanor became "despondent" and "accusatory" in the classroom. The student accused the claimant of giving him "baby work for mentally disabled" students.
8. On some occasions, Student A refused to come to the claimant's class.
9. The claimant reported Student A's behavior to her supervisor and her mentor.
10. Subsequently, the claimant's contacts with Student A's mother became "hostile." Eventually, the mother refused to communicate with the claimant directly.
11. On 01/11/18, the claimant followed up with the VP; he told her she had not yet reviewed the video.
12. On 01/12/18, the claimant returned to her locked office after lunch and found her backpack (inside the locked drawer) open and her credit cards removed from her wallet and loose. The claimant's backpack contained confidential student information.
13. The claimant went to the office and asked to speak to the VP; he was not available so the claimant left a note for him in his mailbox. The claimant also called the VP and left him a voice mail informing him of her concerns.

14. On 01/16/18, the claimant met with the VP and told him she was “really anxious” about the incidents involving her bag. She asked the VP if he had reviewed the video and he said “not yet.”
15. On approximately 01/30/18, the claimant was in the kitchen classroom with her students and she noticed kitchen materials were missing. The claimant reported the missing materials to the teacher in charge of the kitchen classroom and the principal.
16. The same week, while in the kitchen classroom, the claimant discovered half of the culinary knives were missing. The claimant was “very alarmed” and reported the missing knives to the teacher in charge of the kitchen classroom. The teacher told the claimant she would report the missing knives to the principal.
17. The claimant found the incidents involving her bag and the kitchen materials “very upsetting.”
18. The claimant sent the Principal an email notifying him of the missing materials from the kitchen classroom.
19. On 02/15/18, the VP called the claimant and informed her that he had reviewed the surveillance video outside her office and “didn’t see anything.”
20. On 02/15/18, the claimant was getting ready to go home and she observed two keys to her desk were broken off in the keyholes. The claimant went to get help and ran into the VP in the building; she reported the incident and he told her he “guaranteed” her he would address it.
21. The following week, the janitor came to the claimant’s office to replace the locks in her desk. He was unable to replace the locks and told her he might have to replace the desk.
22. In March 2018, the claimant went out to her car in the school parking lot and found “two big scratches” in it and the side mirrors pushed in. The claimant believed the incident occurred at the school.
23. The claimant did not report the damage to her car to the police because the school police officer had told her he was best friends with the police chief in [Town A], Massachusetts. The claimant and the police chief in [Town A] had disagreements in the past regarding a break in at her home.
24. In March 2018, the Special Education Administrator (SEA) told the claimant someone had “unloaded” candy wrappers on her desk. In her office, the claimant found her desk drawers open and “weird notes” atop the desk.
25. The claimant believed someone was harassing her.

26. The claimant did not feel safe at the school or trust the administration.
27. In April 2018, the claimant attended an IEP meeting for Student A. In the meeting, the claimant believed Student A's mother was "disrespectful and threatening" towards her.
28. In the IEP meeting, Student A's mother said: "We're going to move forward. [Claimant] is not observing [Student A's] rights" and "I'm not going to let it go."
29. The claimant expected the individual running the meeting "to explain the rules of conduct" to Student A's mother but they did not.
30. After the IEP meeting, the liaison said to the claimant: "[Student A's] mother will have your job."
31. The Monday after April vacation, the claimant was anxious due to her fear of Student A's mother. The claimant did not report to work.
32. On 04/24/18, the claimant mailed her notice of resignation to the Principal.
33. On 04/27/18, the claimant met with the SEA to discuss her reasons for resigning.
34. The SEA attempted to persuade the claimant not to resign; he said: "You still have your job." The SEA assured the claimant he would "look into" her concerns right away.
35. The claimant did not provide the SEA with "specifics" because she "wanted to see what he would do."
36. The claimant wanted the SEA to "look at": (1) security in her office; (2) issue with Student A's mother; (3) issue with Student A and his "inappropriate email;" and (4) "indirect threats" by the liaison.
37. On approximately 04/29/18, the claimant emailed the SEA and Principal "about working tomorrow."
38. The SEA replied and instructed the claimant not to report to the high school but to report to his office instead.
39. The claimant telephoned the SEA and informed her the Superintendent had accepted her resignation.
40. The claimant was willing to return to work for the instant employer and hoped the SEA would address her concerns.

41. On 07/05/18, the claimant filed a claim for unemployment benefits with an effective date of 07/01/18.

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 original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant voluntarily left her employment without good cause attributable to the employer.

Because it is undisputed that the claimant voluntarily resigned from employment, her 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 she is eligible to receive unemployment benefits.

The review examiner found that, beginning in January, 2018, the claimant discovered that someone had looked through her bags on a few occasions while she was working. Somehow, someone gained access to the claimant's items, even though she kept them in a locked desk drawer in her locked office during work hours. The review examiner also found that someone damaged the claimant's desk drawer in February, 2018. Furthermore, in March, 2018, the claimant discovered two big scratches on her car, that the side mirrors were pushed in while it was parked in the school's parking lot, and that someone left a pile of candy wrappers and weird notes on top of her work desk. The claimant began to complain to the vice-principal as early as January, 2018, about these issues, with no resolution.

The claimant resigned on April 24, 2018, after the employer's liaison told her that a student's mother would have her job. The mother that the liaison was referring to had just accused the claimant of not observing her child's rights, and she told the claimant that she would not let it go. The child was one of the claimant's students, and he had previously solicited money from the claimant using the school's email system. At the time the claimant reported the student's inappropriate email to her supervisor, the liaison had told the claimant that she should have kept the incident to herself. The review examiner found that, in light of everything that had been happening since January, the claimant believed someone was harassing her, and she did not feel safe working for the employer or trust the employer's administration. However, after she gave notice of her resignation, the claimant considered staying on the job based on a promise by the

special education administrator to immediately investigate and possibly resolve her concerns. Despite this assurance by the special education administrator, the superintendent ultimately accepted the claimant's resignation, and the claimant was separated from employment.

The review examiner concluded that the claimant's concerns were not serious enough to cause her to quit her employment. The examiner based this statement on the claimant's willingness to continue working while the special education administrator investigated her concerns. We disagree with this conclusion because it is illogical, as the claimant was *only* willing to stay on the job if her concerns were fully investigated and resolved, which underscores the gravity of the situation from the claimant's perspective. To determine if the claimant has carried her burden to show good cause under the above-cited statute, we must first address whether the claimant had a reasonable workplace complaint. *See Fergione v. Dir. of Division of Employment Security*, 396 Mass. 281, 284 (1985).

The findings here establish that the claimant reasonably believed someone was looking to harm her, as damage was being done to the claimant's work items and her personal property during work hours and on the employer's property. Additionally, the school's liaison had twice showed animosity and a lack of support toward the claimant with respect to a troubled student who had behaved inappropriately toward the claimant. The claimant also reasonably believed that the mother of this troubled student posed a threat to the claimant's continued employment. Thus, we believe the claimant's reasonable concerns about the safety of her person and property as well as the threat being made to her continued employment establishes that the claimant possessed a valid workplace complaint.

Under Massachusetts law, in addition to establishing that she had a valid workplace complaint, the claimant must show that she made reasonable efforts to preserve her employment — not that she had “no choice to do otherwise.” *Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development*, 66 Mass. App. Ct. 759, 766 (2006) (citation omitted). Here, the claimant reported the break-ins to her office and desk to the vice-principal in early January. The claimant did not hear back from the vice-principal on this issue for over a month, until he informed her that he looked at the surveillance video and “didn't see anything.” The vice principal next guaranteed to the claimant that he would look into damage done to the claimant's desk in February, 2018, but no culprit was found, the claimant's car was subsequently damaged while on school property, and weird notes and empty wrappers were left on the claimant's work desk. In light of the foregoing, we find that the claimant took reasonable steps to preserve her employment when she complained to the vice-principal multiple times about the incidents at issue, but the problem was not resolved. Perhaps the claimant could have reached out to someone else with her concerns prior to resigning, but the claimant is not required to exhaust every possible solution to her problems. Additionally, aside from not having her issues resolved by the vice-principal, the claimant also experienced a lack of support from the employer's liaison, so she understandably lost confidence in the administration prior to resigning.

We, therefore, conclude as a matter of law that the claimant left her employment for good cause attributable to the employer, and she took reasonable steps to preserve her employment prior to quitting, within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending July 7, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 24, 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.

SVL/rh