

**Board of Review
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**Paul T. Fitzgerald, Esq.
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Member
Michael J. Albano
Member**

Issue ID: 0026 2258 07

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 November 17, 2017. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On September 14, 2018, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on December 20, 2018, the review examiner reversed the agency determination, concluding that the claimant voluntarily left employment without having good cause attributable to the employer, and, thus, she was disqualified under G.L. c. 151A, § 25(e)(1). The Board accepted 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 correctly decided that the claimant is ineligible for benefits under G.L. c. 151A, § 25(e)(1). We agree that the claimant failed to show that her decision to accept a voluntary separation package and leave her employment was based upon a reasonable fear of imminent layoff. *See White v. Dir. of Division of Employment Security*, 382 Mass. 596, 597–598 (1981) (an employee may be entitled to benefits if she can show that she accepted a VSP under a reasonable belief that she would soon be laid off if she did not accept the employer's offer). However, we do so without regard to whether the employer hired additional personnel *after the claimant separated*, because this is immaterial to the claimant's knowledge and the reasonableness of her belief at the time she made the decision to resign. In all other regards, the review examiner's decision is based upon substantial evidence and is free from any error of law affecting substantive rights.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning November 17, 2017, 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 - April 24, 2019



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.

AB/rh