Where the claimant had worked remotely for six years, and the employer decided to change the job model from a remote position to an in-person position, and the claimant could not work at the employer's physical location in Massachusetts, because she had relocated to Maine and Florida, the claimant had good cause to resign her position, due to the change to the fundamental nature of her job, and is eligible for benefits, under G.L. c. 151A, § 25(e)(1).

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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 September 10, 2018. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on October 11, 2018. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on January 3, 2019.

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 and remanded the case to the review examiner to take additional evidence regarding the claimant's job duties and whether the employer changed them in early 2018. Both parties attended the remand hearing, which was held over the course of two days. Thereafter, the review examiner issued his 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 to deny 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 review examiner has found that the claimant had been allowed to work remotely for six years, but the employer decided to change the job back to a more on-site position in early 2018.

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 skilled nursing facility, from November 8, 1999 to September 6, 2018 as a Clinical Liaison.

2. The employer's work location was in [City A], Massachusetts.

3. The claimant's residence was in [City A], Massachusetts.

4. For approximately six years, the claimant and one other employee telecommuted and would "periodically" report to the office for staff meetings. Years ago, the claimant attended monthly admissions meeting which fell to the wayside as they were deemed unproductive and were only for having "face-time." An exact number is unknown. In 2018, the claimant was not notified of any mandatory in-person meeting.

5. In January or February of 2018, the employer informed the claimant (and the other employee) that the employer was considering a transition of her job back from telecommuting to a more in-office/on-site type of job that it once was several years prior. The employer intended to restore the position to the way it was several years prior, which included rounding in hospitals and office work.

6. In April of 2018, the claimant placed her house on the market and at the end of May of 2018, the claimant sold her house and took up residence in Maine for the summer months with the intent to reside in Florida from October to May each year.

7. In or around April of 2018, the claimant informed the Regional Director of Admissions and the former Vice President of Marketing and Sales (then Vice President of Network Integration/Transitions of Care) of her intent to relocate to Maine and Florida, which was indicated by the Vice President to the claimant as being feasible, but Florida being questionable.

8. In June of 2018, the current Senior Vice President of Marketing learned that the claimant already relocated to Maine. The then-Vice President of Network Integration/Transitions of Care, who was in the process of resigning, sent an email to the current Senior Vice President of Marketing on June 6, 2018 in full support of the claimant remaining employed in a remote capacity after meeting with the claimant at the end of May of 2018. The Senior Vice President of Marketing opined that Florida is unlikely, but it was not yet determined. The Senior Vice President of Marketing did not believe the claimant's issue was a priority at that time due to the claimant already having relocated and the need to find a replacement for the outgoing Vice President being a bigger priority. The claimant's move went unaddressed.

9. On July 31, 2018, an impromptu staff meeting took place, of which the claimant was unaware. The claimant's counterpart was also not in attendance of the meeting.

10. On August 8, 2019, an impromptu training meeting took place, of which the claimant was unaware. The claimant received the training information via email, which sufficed for the claimant to adjust her tasks as necessary.

11. On August 21, 2018, the claimant, who received no formal answer regarding continued employment working remotely, requested an answer regarding working remotely from Florida, but with a reduction in hours also.

12. A teleconference was then scheduled for September 6, 2018 to address the claimant's request. On September 6, 2018, the claimant did not participate at the appointed hour.

13. Later that day, the Senior Vice President of Marketing with another member of management held an unscheduled conference call with the claimant to address her requests. The claimant renewed her request to reduce her hours from forty to thirty and work remotely from Florida. The employer explained its position on the matter and the reasons for the transition, which was still in the works. The Senior Vice President of Marketing denied the claimant's request by stating that all remote work will be coming to an end. The claimant stated that she could not and the Senior Vice President of Marketing asked if that was the claimant's resignation three times.

14. On September 7, 2018, the claimant called out.

15. On September 10, 2018, the claimant resigned.

16. In October of 2018, the claimant took up residence in Florida for the winter months.

17. The Senior Vice President of Marketing placed importance on in-person meetings for team building and information sharing.

18. The Senior Vice President of Marketing never met the claimant face-to-face since he began in February of 2018.

19. The Senior Vice President of Marketing maintains that the claimant's presence would be necessary as the employer was transition [sic] back to the industry standard model of having Liaisons visit hospitals to perform some of the work.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner and determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's 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 conclude that the claimant has shown that she quit her position for good cause attributable to the employer.

There is no dispute that the claimant resigned from her position with the employer on September 10, 2018. Therefore, the claimant's separation is governed by G.L. c. 151A, § 25(e), 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

The language of these statutory provisions places the burden on the claimant to show that the she is eligible to receive unemployment benefits. After the initial hearing, the review examiner concluded that the claimant had not carried her burden. Following our review of the entire record, including the documentary evidence, the testimony from the hearings, and the consolidated findings of fact, we disagree.

Although the review examiner did not make a specific finding of fact as to why the claimant resigned on September 10, 2018, we think the reason for the resignation is contained within Consolidated Finding of Fact # 13. There, the review examiner found that, on September 6, 2018, "the claimant renewed her request to reduce her hours from forty to thirty and work remotely from Florida." In response, a vice president "denied the claimant's request by stating that all remote work will be coming to an end." The claimant then said that she could not do that. Her resignation followed a few days later. It is reasonable to conclude from this that the claimant quit her position, because she could not work at the employer's job location in [City A], where she had adopted a lifestyle of living in Maine and Florida.

The review examiner found that, for approximately six years, the claimant had worked remotely from home. She "periodically" attended staff meetings at the employer's physical location in [City A], Massachusetts. The exact number of those meetings is not known, nor is the exact nature of those meetings. *See* Consolidated Finding of Fact # 4. Because no finding was made as to what the nature of the meetings was, it cannot be said that those meetings were mandatory or necessary. For example, we cannot conclude that the claimant would have been subject to discipline if she failed to attend any of those meeting during the course of her six years working remotely from home. It follows, then, that her work could be done remotely from any location, whether it was at the claimant's home in [City A], in Maine, or in Florida. Indeed, the claimant appears to have done her job to the satisfaction of the employer for the period of time she lived

in Maine from late May of 2018, through early September of 2018.[1] It is logical to conclude that, had the employer's job model not changed, the claimant could have continued to do her clinical liaison duties remotely, from her homes in Maine and Florida.

Consequently, the focus of the case is the employer's change in how it viewed the claimant's job duties. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980) (in good cause cases, the focus is on the employer's conduct and not the claimant's personal reasons for leaving). The employer's Senior Vice President of Sales and Marketing (vice president) offered testimony (referenced in the review examiner's consolidated findings of fact) that the employer was transitioning from a model where its clinical liaisons worked remotely to a model in which its clinical liaisons performed services in hospitals. Consolidated Finding of Fact # 18. As such, the employer was now going to be placing more emphasis on physical presence in the hospital and at in-person meetings, as opposed to how the employer viewed the role for the past six years. *See* Consolidated Findings of Fact ## 17 and 19. In short, the employer was changing the claimant's position, and quite significantly. Six years of performing a job remotely is a long enough period of time to establish the remote nature of the claimant's job. The decision to change how and where she did her work was a substantial change in the terms and conditions of the claimant's employment initiated by the employer. It gave rise to good cause to separate from her job. *See* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984).

We note at this juncture that the claimant's move to Maine and Florida was not the precipitating event which resulted in the separation. If nothing about the claimant's job duties changed, she could have continued to do her job remotely from Florida. After all, she had done the job remotely for six years and had shown that she could do the job remotely from Maine for several months. The separation resulted, because the employer wanted the claimant to report to the workplace more, and, thus, the claimant could not do from her homes in Maine or Florida.[2]

The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino, 393 Mass. at 93–94. In this case, the employer informed the claimant on September 6, 2018, that it could not accommodate her request to work remotely from Florida. Although the claimant did nothing after that to preserve her job prior to quitting on September 10, 2018, she had tried to discuss how relocating might impact her existing employment the prior April by informing the Regional Director of Admissions and the former Vice President of Marketing and Sales of her plans. *See*

[1] We note that the employer apparently conducted several meetings at its location in [City A] during the summer of 2018, which the claimant did not attend. None of the consolidated findings of fact indicates that she was told about the meetings. No discipline resulted from her failure to attend the meetings. This reinforces our conclusion that the claimant's presence in the employer's workplace was not a necessary job requirement for six years, until 2018, when the claimant was told that all remote work was being phased out.

[2] The facts of this case suggest that when the claimant was hired, she may have had more in-person, on-site duties. *See* Consolidated Finding of Fact # 4. Our decision would be the same if a person was hired initially to work remotely. If, after several years, the employer decided to change the position to an in-person, on-site job, and the claimant could not report to the employer's workplace because of physical distance, the claimant would have good cause to quit. As noted, we think the lengthy period of six years of remote working in this matter takes it into the realm of an agreed-upon aspect of the job, which, if changed by the employer, creates good cause to quit. If the parties had merely agreed on a temporary arrangement for working remotely, or if working remotely was agreed upon in a trial sense, then good cause may not have been shown.

Consolidated Finding of Fact # 7. We think that further efforts to preserve her job would have been futile. There is no indication in the findings or in the testimony offered by the vice president during the hearing that the in-person requirement was negotiable. The departing Vice President of Network Integration/Transitions of Care had lobbied unsuccessfully for the claimant to be able to continue to work remotely. *See* Consolidated Finding of Fact # 8. The review examiner made clear findings that the employer wanted to "restore the position to the way it was several years prior, which included rounding in hospitals and office work." Consolidated Finding of Fact # 5. The vice president was transitioning "back to the industry standard model of having Liaisons visit hospitals to perform some of the work." Consolidated Finding of Fact # 19. We see no reasonable way for the claimant to have kept her job, given the transition from a remote position to an in-person one.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits is not supported by substantial and credible evidence or free from error of law, because the claimant has shown that the employer changed a fundamental aspect of her job, thereby preventing her from continuing to perform her job duties and creating good cause attributable to the employer for her to leave her position pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning September 9, 2018, and for subsequent weeks if otherwise eligible.

Charlene A. Stawicki

BOSTON, MASSACHUSETTS
DATE OF DECISION – March 28, 2019

Charlene A. Stawicki, Esq.
Member

Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. declines to sign the majority opinion.

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