

Claimant medical assistant failed to establish good cause attributable to the employer under G.L. c. 151A, § 25(e)(1), where the employer criticized her work performance in front of patients on her last day, and the claimant's other complaints of alleged workplace hostility were not directed at her or cumulatively sufficient to establish a hostile workplace.

**Board of Review
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BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award 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 December 18, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 12, 2019. The claimant 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 awarded benefits in a decision rendered on April 12, 2019. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was entitled to benefits 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 employer's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Both parties 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 had good cause attributable to the employer to quit because the employer created a hostile work environment, 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. The claimant worked for the employer, a dermatology office, from 9/4/18 until 12/18/18 when she became separated. She had worked as a Medical Assistant.
2. The claimant was hired to work full time, Monday through Thursday from 8:30 a.m. to 5:30 p.m. and Fridays 8:30 a.m. to 12:30 p.m.
3. The claimant left her job because of the treatment which she received from her immediate supervisor, the Owner/Doctor of the practice. This environment adversely affected the claimant's ability to perform her job.
4. On 12/18/18, the claimant was in a room with the Doctor and a patient. The claimant and the Doctor had their backs towards each other. The Doctor asked the claimant to pull a certain prescription. The claimant looked in the bin but there was no prescription, the claimant had ran [sic] out of the prescription the day before. The Doctor told the claimant in front of the patient that she was putting him behind schedule. The Doctor instructed the claimant when she was done with the patient to bring the prescription out to him.
5. The claimant felt embarrassed by the remarks the Doctor made in front of the patient. She forgot the sample the Doctor wanted her to give the patient so she asked the Doctor and he responded by telling the claimant she needed retraining if she can't remember the sample he wanted her to give the patient. The claimant was humiliated. The Doctor's tone had changed as he spoke to the claimant.
6. As the claimant left the exam room she mouthed to another Medical Assistant, "Can't take it anymore, I am done".
7. On 12/18/18, the claimant informed the Supervisor of the Office and the Medical Assistant after lunch that she was quitting because she could not take the Doctor berating her anymore.
8. The Doctors [sic] mistreatment towards the claimant began at the beginning of the claimant's employment. He had called her a liar, not believing she had jury duty after the claimant had informed the employer at her interview that she would need time off for the jury duty.
9. The Doctor had made other comments the claimant did not feel comfortable with approximately 3 to 4 weeks into her employment. There was an issue with billing and he stated "I am going to lose my shit".
10. On another occasion while at the front desk the Supervisor of the Office was swearing and yelling at the new hire. The claimant reported this incident to the Doctor by both text message and by phone but the Doctor never got back to her. The claimant discussed the matter with the new hire who gave her notice and quit because of the hostile work environment.

11. The claimant and her coworkers would complain to each other on a daily basis about the Doctor's behavior and attitude towards them.
12. The claimant felt after the last incident she had no choice but to leave her position. It was a one Doctor practice so the claimant did not see any other recourse. She did not request a leave of absence because she felt it would not have been helpful and there were no other positions available for her to transfer into, so she never requested a transfer prior to her leaving.
13. The claimant tried to perform her job to the best of her ability. She did not want to quit her job but felt the mistreatment by the Owner/Doctor was creating a hostile work environment.

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 ultimate 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 # 3 where the review examiner found the claimant's work environment adversely affected her ability to perform her job, because as discussed further below, we do not believe this portion of the finding is supported by substantial and credible evidence in the record. We also reject the portion of Finding of Fact # 8 where the review examiner found the doctor called the claimant a "liar," because the claimant herself testified "he pretty much all but called me a liar" regarding her disclosure of jury duty¹. We also note that in Findings of Fact ## 10 and 13, the review examiner references a "hostile work environment," which is a legal conclusion rather than a finding of fact.

In adopting the remaining findings, we deem 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 was entitled to benefits based on her separation from this employer.

The review examiner awarded benefits after analyzing the claimant's separation under 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 G.L. c. 151A, § 25(e)(1), it is the claimant's burden to establish that her separation was for good cause attributable to the employer. To show good cause attributable to the employer,

¹ A distinction she repeats in the written statement she submitted to the Board on June 4, 2019.

the focus is on the employer's conduct and not on the employee's personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

The review examiner found that the claimant quit on December 18, 2018, after the doctor/owner (hereafter, "the employer") told her in front of a patient that she was putting him behind schedule, after she had failed to keep a prescription bin filled, and then remarked that perhaps she needed retraining when she couldn't remember the sample he asked her to give the patient.

The review examiner found that after these remarks, the claimant felt "humiliated," told a coworker, "Can't take it anymore, I'm done" after she left the exam room, and told her coworkers after lunch that she was quitting because she could not take the employer "berating" her anymore. The claimant left the workplace without completing her shift on December 18, 2018.

In her findings, the review examiner enumerates less than a handful of incidents of "mistreatment" alleged by the claimant, which left the claimant feeling "after the last incident she had no choice but to leave her position." The review examiner found that, early in the claimant's employment, the employer [all but] called the claimant a "liar" when he did not recall her telling him she would need time off for jury duty. The review examiner also found that, on one occasion, the employer was upset about a billing issue and said he was "going to lose his shit." Additionally, the review examiner found that, on another occasion, a coworker swore and yelled at another new employee at the front desk, and the claimant reported this to the employer by text message and telephone, but the employer never got back to the claimant about a resolution. Lastly, the review examiner found that the claimant and her coworkers complained to each other "on a daily basis" about the employer's behavior and attitude toward them.

The review examiner concluded that these incidents created a hostile work environment that constituted good cause attributable to the employer for quitting. We disagree.

The final incident, where the employer scolded the claimant for not keeping a prescription bin filled, was a response to the claimant's failure to adequately perform her job duties. While the employer could have been more gracious in his words, his comment that the claimant was "putting him behind schedule" was reasonably related to his workplace need to treat patients efficiently. Similarly, when the employer used a "different tone" and suggested the claimant may need retraining after she forgot what sample he had instructed her to give a patient, his approach could have been more ingratiating, but it was again reasonably related to efficiency in the workplace. In neither of these incidents did the claimant allege that the employer yelled or swore at her, called her any offensive names, or berated her excessively for her subpar job performance.

As noted above, the claimant did not actually allege that the employer called her a liar. Rather, she contended he "all but called me a liar." Even if he had called her a liar, the claimant does not contend that the employer interfered with her obligation to report for jury duty, or that he ever implicitly used that term toward her during the remainder of her employment.

With regard to the allegation that the employer said he was "going to lose his shit" over a billing issue, the claimant did (and does) not contend that he directed his ire at her about this issue, or

that he repeated this conduct again. One incident where the employer swore in the workplace without targeting the claimant (or anyone else) specifically does not create a hostile work environment.

Regarding the allegation that one coworker yelled and swore at another, the claimant complained to the employer about the incident and did not allege that the offending coworker engaged in similar conduct again. The dispute between two coworkers was not directed at the claimant, and even if the new coworker left the employer in part or entirely due to this incident, it does not alter the fact that this hostility was not directed at the claimant.²

Finally, the allegation that the employer's office staff complained about his behavior and attitude towards them "on a daily basis" does not establish a hostile workplace. Rather, it is a fairly common workplace activity for subordinates to complain about their managers' shortcomings.

The review examiner concluded the claimant quit because of "such a hostile working environment that she could no longer perform her job properly." We disagree with her conclusion, as a matter of law. However, the record before us does not establish that the claimant's workplace experiences as detailed in the findings adversely effected the claimant's ability to carry out her job functions as a medical assistant in the employer's practice. The record does not indicate that during her employment, the claimant regularly experienced performance issues or was disciplined for such issues. Nor does the record indicate that the claimant's workplace environment somehow rendered her unable to provide quality medical assistance to the employer's patient. Rather, the record indicates the claimant was unhappy with and dissatisfied by her job. While the claimant's unhappiness about being reprimanded on her last day for workplace mistakes is understandable, it does not establish a hostile workplace. The earlier incidents credited above by the review examiner, even considered cumulatively, also fall far short of the "continual verbal abuse" she alleged in a statement to the DUA. *See* Exhibit # 1, p. 7.

The sum of the claimant's complaints simply does not rise to the level of "unreasonable harassment." The claimant did not allege that the employer yelled or swore directly at her, or called her any inappropriate names. She did not contend that she sought medical treatment for stress allegedly deriving from the employer's workplace. The example of "workplace hostility" that drove her to quit on her last day arose from the employer's criticism of her own job performance issues, and did not rise to the level of unreasonable harassment.³

Even if they did, 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 v. Dir. of Division of Employment Security, 393 Mass. 89, 93-94 (1984). Here, the claimant did not identify any specific times that she approached the employer to express her unhappiness or

² We note that it is not uncommon for an employer not to disclose to coworkers any discipline meted out to other employees who are found to have engaged in workplace transgressions. Put more simply, the employer here was not obliged to report to the claimant how he addressed the dispute, which she had brought to his attention.

³ The additional episodes recalled in the claimant's June 4 submission to the Board similarly do not rise to the level of unreasonable workplace harassment that constitute good cause attributable to the employer for quitting.

dissatisfaction with any aspect of their interactions, even though she contended there was daily abuse.

We, therefore, conclude as a matter of law that the claimant quit without meeting her burden to show good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(2), and without making reasonable attempts to preserve her job before quitting.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending December 22, 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 - July 10, 2019



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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

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.

JPC/rh