

0028 7625 54 (Aug. 30, 2019) – A claimant, who was assigned her supervisor’s job duties after the supervisor left the company, had good cause to quit her job and is eligible for benefits under G.L. c. 151A, § 25(e)(1), because the claimant was uncomfortable doing both her own and the supervisor’s duties, she was not offered any pay increase, there was no indication that the change was temporary, and the employer did not offer a reasonable solution to the issue.

Board of Review
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Issue ID: 0028 7625 54

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, effective December 7, 2018. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on April 26, 2019. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency’s initial determination and denied benefits in a decision rendered on May 29, 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 allow the claimant an opportunity to offer evidence regarding her separation from employment. Only the claimant attended the remand hearing. 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 unemployment 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’s consolidated findings of fact show that, at the time of the claimant’s decision to resign her job, she was performing both her own work and the work of her supervisor and that she was not given new training or additional compensation to perform all of the duties.

Findings of Fact

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

1. The claimant worked for the employer as a Technical Services Specialist from 10/15/2014 until her separation on 12/7/2018.
2. In August 2018, the claimant's direct supervisor left the employer and the employer gave the supervisor duties to the claimant to perform in addition to her own duties as a Technical Services Specialist.
3. The employer did not provide the claimant with any increase in pay for the additional duties.
4. The claimant was not provided training for her supervisor's duties.
5. The claimant requested additional compensation for the increased job duties however the employer did not respond back to her request.
6. The claimant did not feel comfortable performing her supervisor's duties and wanted to remain performing the duties of a Technical Services Specialist which was her background.
7. The claimant addressed this issue to the employer who informed the claimant that she could apply for other positions however there were no other suitable positions for her background in Technical Services Specialist.
8. Due to the change in job duties and increase in job duties, the claimant gave the employer a two-month resignation notice so assist the employer with vacation coverage.
9. The claimant worked out the resignation notice, last working on 12/7/2018.

Credibility Assessment:

The claimant's testimony is accepted as credible in all contested [areas] since the claimant was forthright in giving firsthand testimony and her detailed and consistent version of the events made more logical sense. The testimony of the multiple employer witnesses [sic] less detailed and speculative at times when questioned, thus causing the claimant's testimony to be considered more credible in all contested area.

Furthermore, the employer did not appear at the remand hearing, thus leaving the claimant without the opportunity to cross examine the testimony produced by the employer from the original hearing.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we reject the review examiner's legal conclusion that the claimant did not carry her burden to show that she is eligible to receive unemployment benefits.

There is no dispute that the claimant quit her job with the employer. She gave approximately two months' notice and last worked on December 7, 2018. Therefore, her qualification for benefits is governed by 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

This section of law explicitly places the burden upon the claimant to show that she is eligible to receive unemployment benefits. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985). After the initial hearing, which the claimant did not attend, the review examiner concluded that the claimant had not carried her burden. Following our review of the entire record, including the claimant's testimony from the remand hearing and the review examiner's consolidated findings of fact, we disagree.

After considering all of the evidence before him, the review examiner found that the claimant quit her job, "[d]ue to the change in job duties and increase in job duties." Consolidated Finding of Fact # 8. Although the claimant testified to other factors which affected her decision to resign, including that she saw a lack of opportunities at the company, the issue with her job duties was clearly the driving force behind the separation. In August of 2018, the claimant took on the duties of her supervisor. Consolidated Finding of Fact # 2. She was neither trained to take on supervisory duties, nor was she reasonably compensated for doing substantially more work. Consolidated Findings of Fact ## 3 and 4. Nothing in the findings of fact indicates that the change to the claimant's job was temporary. We think that the indefinite increase in job duties, which the claimant did not feel comfortable doing, constituted a reasonable workplace complaint. In other words, it was not reasonable for the employer to expect that the claimant would perform the work of two employees without any increase in pay, additional training, or help.

Our analysis as to the claimant's complaint is guided by the DUA's policies, as contained within the Service Representative Handbook (SRH). This Board has traditionally accorded a degree of deference to the SRH, because it represents the experience, technical competence, specialized knowledge of the DUA as well as the discretionary authority conferred upon the Agency by the

Massachusetts Legislature. *See, e.g., Grand v. Dir. of Division of Employment Security*, 393 Mass. 477, 481 (1984). Section 1215 of the SRH indicates that a claimant has good cause attributable to the employer for resigning her position, if the employee is “permanently transferred to new duties which are outside the scope of his or her general work classification.” Here, the claimant was not transferred; she was still performing her old job duties. However, the employer unilaterally added supervisory job duties to her plate, essentially transferring those duties to her. Section 1222(F) also provides that a claimant has good cause to leave a job if she is “transferred indefinitely . . . to new work which requires a higher level of skill, but he or she receives no increase in wages.” Here, the claimant was asked to take on job duties previously done by her supervisor, with no augmentation to her pay. We generally agree with both sections cited, and they support our conclusion here that the claimant had good cause to quit.

In order to be eligible for unemployment benefits, the claimant must also 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 requested additional compensation, but received no response. Consolidated Finding of Fact # 5. She also complained about the new job duties, but she was not offered a suitable resolution. The employer responded that she could apply for another position. However, no work in the claimant’s field was available. Consolidated Finding of Fact # 7. These actions show that the claimant attempted to resolve the matter prior to quitting her position, but that her reasonable complaint was not adequately addressed by the employer.

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 carried her burden to show that she had good cause to quit her job within the meaning of G.L. c. 151A, § 25(e)(1), due to the increased job duties assigned to her without a reasonable increase in pay, training, or other assistance.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning December 2, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 30, 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.

SF/rh