

Payroll coordinator's 60-70 hour work week continued for 2 years, despite complaints about the workload and requests to hire an additional person. Held she had good cause attributable to the employer to resign pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0029 2912 76

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 February 1, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 22, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on April 20, 2019. 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 or urgent, compelling, and necessitous reasons and, thus, she was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have good cause attributable to the employer to resign, is supported by substantial and credible evidence and is free from error of law, where the record shows that despite her complaints, the claimant had to work 60-70 hours per week for over two years.

Findings of Fact

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

1. The claimant worked full time as a payroll coordinator lead for the instant employer, a construction company, from 09/09/14 until on or about 02/01/19.

2. The claimant is responsible for processing payroll for employees as well as other job duties.
3. During the last 2 years, the employer had acquired additional companies which added additional employees to process payroll for.
4. During the last 2 years, the claimant has worked approximately 60-70 hours each week because she was unable to get her work done during the regular work week.
5. If the claimant was unable to get her work done during the office hours, her supervisor would tell her to log in from home and continue to work.
6. The claimant was always compensated for all of her hours worked.
7. The claimant told the DP¹ constantly that she couldn't get her work done and the DP would always tell the claimant to "hang in there."
8. On or about May of 2018, the payroll department lost one of their payroll coordinators.
9. The claimant asked the DP if they were going to hire another payroll coordinator and she was told that the company is working on it and trying to get someone hired.
10. The claimant constantly felt stressed because of the workload and being unable to complete her work during her last 2 years of employment.
11. The stress caused the claimant to have migraines and "stress hives."
12. The claimant was never warned for her job performance.
13. On 11/20/18, the claimant had come back to work after being out of the office for a few days.
14. The claimant began to process payroll and again was not able to complete her work during the work hours.
15. This was the "last straw" and the claimant felt that "it wasn't going to get any easier" and she decided to give her notice.
16. On 11/20/18, the claimant submitted a notice in writing to the Director of Payroll (DP) to work until 12/31/18.

¹ "Director of Payroll." See Finding of Fact # 16.

17. The claimant gave such a lengthy notice because she “loved” her job and was “good” at her job and she was hoping the employer would work something out with her so she could stay.
18. There were no changes to the claimant’s job duties or workload during her notice period.
19. On an unknown date in December of 2018, the DP asked the claimant to stay until 03/31/19 and the claimant agreed.
20. The claimant agreed to stay because she “felt bad” for the employer because they needed someone to work.
21. On 02/01/19, the claimant decided that she was no longer going to work for the employer because nothing had changed.
22. The claimant did not request a leave of absence.

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. 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 did not have good cause attributable to the employer to leave her job.

Because the claimant resigned from her employment, this case is properly analyzed pursuant to the following provisions under G.L. c. 151A, § 25(e), which provide, 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.

These statutory sections of law expressly place the burden of proof upon the claimant.

The review examiner found that the claimant left her job because of the stress of her heavy workload and the toll it took on her health. *See* Findings of Fact ## 10–11 and 14–15. We agree with the review examiner’s assessment that the facts in this case do not establish an urgent, compelling, and necessitous basis for leaving employment. Specifically, the fact that the overtime had been going on for two years and, notwithstanding the resultant health problems, the

claimant agreed to continue working for several months after initially giving notice tends to show that her need to depart was not urgent.

However, we do believe the claimant has met her burden to show that she left her job for good cause attributable to the employer. When a claimant contends that the separation was for good cause attributable to the employer, 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). As a threshold matter, the claimant must show that she had a reasonable workplace complaint. Here, the findings show that the employer had the claimant regularly working 60–70 hours per week. Finding of Fact # 4. Considering that a full-time work schedule is generally 40 hours per week, this is, by any measure, a lot of hours. If the overtime burden had been short-term, we might not view her complaint as reasonable. However, this had been her work week for *two years*. Finding of Fact # 4. Moreover, the workload was taking a toll on her health, causing migraine headaches and stress-related hives. Finding of Fact # 11.

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). Finding of Fact # 7 indicates that the claimant repeatedly complained to her supervisor about the amount of work. The employer's response was to "hang in there." She also asked the supervisor to hire another payroll coordinator and was simply told that they were working on it. Finding of Fact # 9. In short, the employer's responses promised no immediate or even definitive solution. We have held that it is not reasonable to expect a person to work under such conditions indefinitely. *See* Board of Review Decision BR-112118 (Mar. 3, 2011) (unreasonable to expect claimant to continue working indefinitely after two months of extended hours, including 98 hours in six days, until the employer could hire more staff). Because the claimant's workload and long hours had not changed in two years, she could reasonably conclude that further efforts to ask for relief would have been futile.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she voluntarily left her employment for good cause attributable to the employer 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 beginning February 3, 2019, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 23, 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.

AB/rh