

Claimant was hired with the promise that her salary would be restored to what she had been earning in her prior job. Three years and numerous requests later, the employer had still not increased her pay. Held claimant had good cause attributable to the employer to resign.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0029 9829 24

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 affirm.

The claimant resigned from her position with the employer on January 4, 2019. She filed a claim for unemployment benefits with the DUA, and the claim is effective March 10, 2019. On March 27, 2019, the DUA sent the claimant a Notice of Disqualification, informing her that she was not eligible to receive unemployment benefits. 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 May 29, 2019.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was not 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 employer's appeal, we accept the employer's application for review. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision to award benefits to the claimant, who quit her position after she did not receive a promised raise in salary, 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 employer is a doctor (Doctor 1).
2. Doctor 1 and another doctor (Doctor 2) wanted to start their own practices. In October, 2018, Doctor 1 executed a contract with Doctor 2. The contract

- indicates that Doctor 1 will lease space from Doctor 2. The contract indicates that the two doctors will share equipment and workers. The contract indicates that Doctor 1 will pay fifty percent of each worker's pay and that Doctor 2 will pay fifty percent of each worker's pay.
3. Doctor 2 began his practice in November, 2018. Doctor 1 then began her practice alongside Doctor 2 in December 2018.
 4. The claimant began work for Doctor 2 in November, 2018. The claimant worked as a full-time nurse manager and practice manager for Doctor 2.
 5. The claimant worked for another employer (Employer X) before she began work for Doctor 2. Employer X paid the claimant sixty-five thousand dollars per year.
 6. When Doctor 2 hired the claimant, the claimant and Doctor 2 agreed that the claimant would receive a sixty thousand dollar yearly salary. Upon hire, Doctor 2 promised the claimant that he would grant a raise to sixty-five thousand dollars per year.
 7. The claimant began work for Doctor 1 on 12/11/18, when Doctor one started her practice alongside Doctor 2. Henceforth, the claimant worked as a full-time nurse manager and practice manager for both doctors.
 8. Doctor 1 and Doctor 2 shared employees and each doctor paid fifty percent of each worker's pay.
 9. In each pay period, the claimant received one check from Doctor 1 and a second check from Doctor 2. Each check was for fifty percent of her pay.
 10. Prior to late December, 2018, the claimant asked Doctor 2 for the promised raise on multiple occasions. Doctor 2 did not grant the raise on these occasions.
 11. In late December, 2018, the claimant again asked Doctor 2 for the promised raise. Doctor 2 did not grant the raise.
 12. The claimant resigned on 1/04/19, because she did not receive the promised raise to sixty-five thousand dollars per year.
 13. The claimant never received any raise while she worked for Doctor 1 and Doctor 2.

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 findings are supported by substantial and credible

evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. It was undisputed during the hearing that the claimant began working for this employer in 2015. She also began working for the other doctor (Doctor 2 in the findings of fact) in 2015. The review examiner's findings of fact repeatedly refer to 2018 as the year in which the claimant started work. This appears to have been a typographical error. In light of the testimony, we note that the events mentioned in Findings of Fact ## 2 through 7 occurred in 2015.

Since the claimant resigned, we analyze her eligibility for benefits 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 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

In order to determine whether there 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).

In this case, the claimant had been promised upon hire that her salary would be restored to the \$65,000 that she had been paid in her prior job. Three years and numerous requests for the raise later, the employer had still not given her the promised salary. We agree with the review examiner that this constitutes good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). *See* Board of Review Decision 0010 9404 96 (Apr. 8, 2014) (since the claimant was promised a raise which never materialized, she had a reasonable workplace complaint with the employer).

We, therefore, conclude as a matter of law that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning December 30, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 2, 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