

Held a claimant, who had received some training from her supervisor, did not have good cause attributable to the employer to walk off the job two hours before her shift ended, because she did not understand part of her assignment and could not find her supervisor to get assistance.

**Board of Review
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Issue ID: 0030 3530 93

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 March 13, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 11, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on July 24, 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 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 remanded the case to the review examiner to take evidence from the employer, who had missed the original hearing due to exigent circumstances. Both parties attended the remand hearing. Thereafter, the review examiner issued her 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 award benefits pursuant to G.L. c. 151A, § 25(e)(1), because the claimant was not given adequate training, is supported by substantial and credible evidence and free from error of law.

Consolidated Findings of Fact

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

1. The claimant was employed fulltime for the employer from February 18, 2019 until the claimant quit on March 13, 2019.

2. The claimant was hired to work as a power press operator, then was transferred to brake press.
3. The claimant's work schedule was 7:00 a.m. to 3:30 p.m., Monday to Friday.
4. The claimant's rate of pay was \$13.00 per hour.
5. The employer's Power Press Lead (Supervisor) was the claimant's immediate supervisor.
6. During the claimant's second week of employment, the Assistant Manager ha[d] a discussion with the claimant about her transfer. During the conversation, he told the claimant that he wanted her to leave. The claimant believed she was discharged and began to walk out of the plant when the Plant Manager told the claimant to return to work.
7. The claimant did return to work as instructed by the Plant Manager.
8. The claimant's Supervisor notified the claimant she is not allowed to ask other employees for assistance and that the claimant must seek help only from her.
9. The Supervisor instructed other employees to not assist the claimant with her work.
10. During the claimant's training, the Supervisor told the claimant that she was slow and that she would begin to time the claimant.
11. On March 13, 2019, while working, the claimant did not understand the measurement for the work assigned to her. The claimant asked a co-worker who typically inspected the claimant's work for assistance with her work. The co-worker refused to assist the claimant.
12. On March 13, 2019, the claimant walked around the location to find the Supervisor for help. The claimant was unable to locate the Supervisor prior to walking off the job.
13. The claimant is aware that the Supervisor is responsible for other departments.
14. On March 13, 2019 at about 1:30 p.m., the claimant decided to walk off the job because she felt uncomfortable and useless as she was not understanding the assignment.
15. The claimant did not seek assistance from the Plant Manager because the Supervisor notified the claimant she is not allowed to ask other employees for assistance and that the claimant must seek help only from her.

16. The claimant quit because she believed she was not being properly trained for the position.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant has carried her burden to show that she is eligible to receive benefits under G.L. c. 151A, § 25(e)(1).

Because it is undisputed that the claimant resigned from her position with the employer, 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

The explicit language in § 25(e)(1) places the burden of persuasion on the claimant. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

To determine if the claimant has carried her burden to show good cause under the above-cited statute, we must first address whether the claimant had a reasonable workplace complaint. *See Fergione v. Dir. of Division of Employment Security*, 396 Mass. 281, 284 (1985) (a claimant need not show that she had no choice but to resign, merely that she had an objectively reasonable belief).

Following remand, the consolidated findings show that the claimant worked as a break press operator Monday to Friday, from 7:00 a.m. to 3:30 p.m. Consolidated Findings ## 2 and 3. The claimant received training from her supervisor and was told to only to seek further assistance and training from her supervisor. Consolidated Findings ## 8 and 10. The employer testified that this was ensure that new employees would not receive inaccurate information from other non-supervisory employees.¹

On March 13, 2019, the claimant had difficulty understanding one of her assigned tasks. Consolidated Finding # 11. Knowing that her supervisor was responsible for multiple departments, the claimant walked around the plant looking for her. Consolidated Finding # 12. The claimant was unable to locate her supervisor and walked off the job at approximately 1:30

¹ We have supplemented the consolidated findings of fact, as necessary, with the unchallenged evidence before the review examiner. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); *Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment Training*, 64 Mass. App. Ct. 370, 371 (2005).

p.m., two hours before her shift ended. Consolidated Findings ## 3, 12 and 14. It is not clear from the record at what time the claimant sought out the supervisor, or how long she waited in her area after being unable to locate her supervisor.²

In her original decision, the review examiner found the claimant quit for good cause attributable to the employer because the Assistant Manager refused to train her. Such a finding is no longer supported after remand, as the consolidated findings of fact lack any indication that the claimant contacted her Assistant Manager on March 13th. See Consolidated Findings ## 11–14.

When considering whether particular facts constitute good cause pursuant to G.L. c. 151A, § 25(e)(1), 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). This Board has previously held that a claimant had a reasonable workplace complaint due to lack of training where she came to the job as a machine operator without any prior experience and was given only two minutes of training. See Board of Review Decision 0019 6109 30 (January 12, 2018). In that case, she did not know who her supervisor was, and her requests for additional training were denied. Id.

In contrast here, the claimant had a designated supervisor who was responsible for her training. Consolidated Findings ## 5 and 10. She had received more than minimal training and had been given specific instructions about who to contact if she had additional questions or required additional training. Consolidated Finding # 8. Further, there was no indication in the record that the claimant’s supervisor would not have assisted the claimant on March 13th, had the claimant waited to speak with her.

In the consolidated findings, the review examiner found the claimant “decided to walk off the job because she felt uncomfortable and useless,” and “believed she was not being properly trained for the position.” Consolidated Findings ## 14 and 16. However, “general and subjective dissatisfaction with working conditions” does not provide good cause to leave employment. Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979) (“intolerable working conditions [which] has generally been understood to import substandard sanitation, temperature, ventilation, or other like factors which may contribute to the physiological discomfort or demise of exposed employees” constitute good cause for leaving employment). Here, the claimant’s frustration arising from being unable to locate her supervisor for additional training on March 13th does not render her work environment so intolerable or unreasonable as to constitute good cause attributable to the employer. See Consolidated Findings ## 12 and 14.

Even if we were to conclude that the employer’s actions rose to the level of “good cause,” the Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer’s actions 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 had two more hours before her shift ended and she could have waited to find her supervisor to seek additional training or assistance. See Consolidated Findings ## 3, 12, and 14. In light of the above, it cannot be concluded that the

² The claimant testified that she was completing a project when she started her shift, and problems arose only after she started a new project sometime during her shift on March 13, 2019.

claimant made reasonable efforts to preserve her employment, or that any further efforts to preserve her employment would have been futile.

We, therefore, conclude as a matter of law that the review examiner's decision to award benefits, pursuant to G.L. c. 151A, § 25(e)(1), is not supported by substantial and credible evidence or free from error of law, because the claimant did not show she left work for good cause attributable to the employer or make reasonable efforts to preserve her employment.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending March 15, 2019, 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 – November 22, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

LW/rh