

Claimant, who was dissatisfied with her meager pay raise, did not show good cause attributable to the employer to resign. The review examiner reasonably credited the employer's hearsay testimony that the claimant quit over the claimant's direct testimony to the contrary, where a series of emails were consistent with the employer's version of events, the claimant failed to adequately explain her statements in these emails, and the claimant failed to provide any documentary evidence to the contrary.

**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: 0030 9998 23

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 affirm.

The claimant separated from her position with the employer on May 2, 2019. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on July 4, 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 August 8, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily quit her employment without good cause attributable to the employer 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 remanded the case to the review examiner to allow the claimant an opportunity to testify and provide other evidence. Only the claimant 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, which concluded that the claimant voluntarily quit her employment without good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law, where the findings show that the claimant left because she was unhappy with her rate of pay and believed that she deserved a larger pay rate.

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, a rehabilitation center, from November 10, 2015 through May 2, 2019.
2. Prior to filing for unemployment benefits, the claimant most recently worked 24 hours a week as a discharge planner.
3. On April 4, 2019, the claimant met with her supervisor ([A]) and another representative of the employer ([B]). During this meeting the claimant was given her performance review and told her salary was increasing from \$15.00 an hour to \$15.34 an hour.
4. The claimant was unhappy with this increase and told the employer she could not live on the amount they were paying and was resigning her position and giving notice. The employer accepted her resignation.
5. On April 5, 2019, [A] emailed the claimant to clarify a vacation request she had made. In the email [A] states to the claimant, "I saw that you requested time off and it is during your two weeks notice. Are you still taking that time? If so, what is your resignation date?"
6. The claimant made no indication that she had not resigned and given notice. Instead, she responded to [A] on April 8, 2019, "Yes, I still will take my vacation. When I return next week, can we possibly go over my resignation date?"
7. The employer posted the claimant's position and hired someone to replace the claimant.
8. On April 15, 2019, [A] reached out to the claimant again stating the claimant had not clarified the date of her last day with the employer. [A] indicated that she would assume the claimant's last day to be May 2, 2019 unless the claimant informed her otherwise.
9. At some point, the claimant reached out to human resources (HR) and stated she did not wish to resign. HR reached out to [A] and received the emails that had been exchanged between [A] and the claimant. HR emailed the claimant again on April 19, 2019 and asked the claimant why she had indicated to [A] that she would go over her resignation date when she returned from vacation if her intention had been to rescind the resignation.
10. The claimant responded via email on April 22, 2019. In her email, the claimant acknowledges that she had told [A] and [B] that she "could not live on \$15.34 an hr. and would give my resignation." She went on to state that "My last day of work would be 5/2/19 if there can not be a change in my pay rate."

11. The claimant resigned her position on May 2, 2019 because she was dissatisfied with her pay.
12. At the time the claimant quit her job, work was still available to her.
13. At the time the claimant quit her job, her employment was not in jeopardy.
14. The claimant filed a claim for unemployment insurance benefits on May 8, 2019, with an effective date of April 28, 2019.
15. On July 4, 2019, the Department of Unemployment Assistance (DUA) issued a Notice of Approval to the claimant. The employer appealed that determination.

Credibility Assessment:

The employer's agent participated via telephone as a sworn witness on behalf of the employer in the initial hearing. The claimant did not participate. On October 8, 2019, a remand hearing was held via telephone in which only the claimant participated. The record was held open until October 15, 2019 to allow the claimant to submit documents which she testified would corroborate her testimony. No documents were submitted.

The credible testimony of the employer witness at the first hearing [indicated] that the claimant had resigned her job because of dissatisfaction with the pay increase she would be receiving as a result of her evaluation. This testimony was corroborated by documentary evidence. In the remand hearing, the claimant insisted that she had not quit. The claimant was unable to provide any credible explanation for why she had engaged in correspondence regarding her anticipated last day, as opposed to responding to her supervisor that she had not, and did not intend to, resign her position. The claimant testified that she had documents (text messages and emails) that would support her position that she had not quit her job but did not provide details regarding those documents or submit any such documents. Given all of the above, the claimant's testimony that she had not told the employer she was resigning is not credible.

Ruling of the Board

In accordance with our statutory obligation, we review 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. As discussed more fully below, we believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. Furthermore, we believe that the review examiner's consolidated findings of fact compel the conclusion that the claimant voluntarily quit her employment without good cause attributable to the employer.

As an initial matter, the parties disagreed as to whether the claimant resigned or was discharged from her position. The review examiner credited the employer's testimony that the claimant verbally resigned during a meeting on April 4, 2019, and provided a credibility assessment to explain this choice. Generally, credibility assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. See School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by 'substantial evidence.'" Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" Id. at 627–628, quoting New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted).

We note that the employer witness was not present during the April 4, 2019, meeting and that his testimony about this meeting constituted hearsay. Hearsay evidence is, however, admissible in informal administrative proceedings, but it can only constitute substantial evidence on its own if it contains "indicia of reliability." Covell v. Department of Social Services, 439 Mass. 766, 786 (2003), quoting Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 530 (1988). Indicia of reliability can be assessed using several factors, including whether it is corroborated by other evidence in the record. Covell, 439 Mass. at 785–786. Even if the proffered hearsay is lacking as to some of these indicia of reliability, the hearsay may still suffice if the countervailing direct testimony is itself not credible — for example, if it is inconsistent, illogical, or presented with a nervous or deceitful demeanor. See Covell, 439 Mass. at 786–787.

In this case, the employer's version of events was corroborated in several ways. The claimant's own testimony about this meeting corroborated that she expressed unhappiness about the size of her pay raise and that she informed the employer she would look for another job.¹ The undisputed documentary evidence, consisting of an email exchange between April 5, 2019, and April 22, 2019, is also consistent with the employer's version of events. The communication indicates that the claimant provided notice of her resignation but initially left her last day of work ambiguous. The claimant failed to provide any documentary evidence to rebut this. Furthermore, the claimant's own testimony could be classified as not credible on its own, as she failed to provide a logical explanation for a number of her statements in these emails. We conclude that the review examiner's consolidated findings and credibility assessment are reasonable in relation to the evidence and therefore supported by substantial evidence.

In light of this, we apply the section of law applicable to voluntary resignations from employment. G.L. c. 151A, § 25(e)(1) 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

¹ We have supplemented the 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 and Training, 64 Mass. App. Ct. 370, 371 (2005).

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). The consolidated findings indicate that the claimant resigned because she was unhappy with the size of a recent pay raise. While a substantial decline in wages, or a broken promise about a larger pay increase may constitute good cause attributable to the employer, there is no evidence that either of these things occurred here. Rather, the evidence shows that the claimant was simply unhappy with her rate of pay and believed that she deserved a larger pay rate. This does not constitute good cause attributable to the employer. General and subjective dissatisfaction with working conditions does not provide good cause to leave employment under G.L. c. 151A, § 25(e)(1). Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979).

We, therefore, conclude as a matter of law that the claimant voluntarily quit her employment without good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending May 4, 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. Fitzgера[B], Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOU[B] 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.

JRK/rh