

Although the claimant obtained benefit year work in the same field as her base period job, the salary was significantly less and the job duties were not managerial, as they had been prior to the start of her claim. Held the work was not suitable and the claimant is not disqualified under G.L. c. 151A, § 25(e)(1).

**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: 0031 3246 62

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 June 14, 2019. She re-opened a previously filed claim for unemployment benefits.¹ On July 9, 2019, the DUA issued a Notice of Disqualification, informing the claimant that she was not eligible to receive benefits following her separation from the employer. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on July 31, 2019.

Benefits were denied after the review examiner determined that the claimant voluntarily left 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 accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence regarding the suitability of the claimant's job with the employer. 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 deny 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 claimant obtained her job with the employer in the benefit year of her unemployment claim, the salary with the new job was significantly less than the salary with her base period employer, and the claimant's job duties did not include managerial aspects.

¹ The relevant unemployment claim was effective October 21, 2018. The claimant obtained her job with this employer after the start of the claim.

Findings of Fact

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

1. The claimant filed a claim for unemployment benefits with the Department of Unemployment Assistance (DUA) on October 22, 2018, with an effective date of October 21, 2018 after being separated from her 14-year employment as a human resources (HR) manager. The claimant's benefit rate is \$684.00 per week.
2. The claimant relocated to Florida and accepted a job with the instant employer, a state university ([Employer A]).
3. The claimant worked full-time as a senior benefits representative (SBR) in the human resources (HR) department for [Employer A], from April 8, 2019 through June 14, 2019.
4. In her previous role as a manager, the claimant was paid a salary of \$68,301.60 annually, \$1308.00 weekly, with a full-time schedule of 30 hours per week.
5. As the SBR, the claimant was paid a salary of approximately \$40,000 annually, \$766.28 weekly, with a full-time schedule of 40 hours per week.
6. As a manager in her previous company, the claimant was responsible for the entire HR process for over 150 employees. This included: payroll, benefit administration, recruiting, orientation for new workers, exit interviews for departing workers, maintaining personnel records, counseling employees and managers on all employee relations issues, managing evaluation process and compensation increases, establishing and chairing a committee for company social activities.
7. In her role with [Employer A], the claimant was not a manager, but was part of a group of employees who handled HR functions for over 3800 full-time employees and 300 temporary employees. The claimant was solely responsible for benefits and her responsibilities included: educating and counseling employees on benefits, assisting in the benefits portion of new hire orientation, handling leave of absence matters with regard to benefits, working with payroll department on payroll matters, and serving as "back-up" to the benefits manager.
8. The claimant was unhappy with her position. The claimant was used to handling things personally and getting things handled quickly for employees. She was frustrated that the employer had procedures in place for handling HR

functions and she could not help employees the way she wanted. The claimant felt she had no say in how things were done.

9. The claimant began to look for another job but found working 8:00 – 5:00 made it difficult for her to do so.
10. The claimant decided to resign to look for another position better suited to her qualifications.
11. The claimant spoke with her supervisor ([Supervisor A]) on June 4, 2019. [Supervisor A] knew the claimant was unhappy in her role and with the rigidity of the processes of the job. [Supervisor A] explained to the claimant that there was nothing she could do about the processes and procedures of the job and they would remain the same.
12. The claimant told [Supervisor A] she thought the position was not a good fit and it would be best if she left before [Employer A] expended more time and resources on her training. [Supervisor A] asked the claimant to think about it before giving her resignation.
13. The claimant submitted a letter of resignation to her supervisor on June 5, 2019 indicating that her last day would be June 14, 2019.
14. On June 14, 2019, the claimant quit her job because she felt it was not a good fit for her.
15. At the time the claimant quit, her job was not in jeopardy.
16. [There] were no positions in HR that the claimant could have transferred to rather than quitting.
17. The claimant did not request a leave of absence prior to quitting.
18. On July 9, 2019, [the DUA] issued a Notice of Disqualification finding the claimant ineligible for benefits. The claimant appealed that determination.

Credibility Assessment:

The claimant and the employer both participated in the initial hearing and the remand hearing by telephone. The credible testimony of both the claimant and the employer witness during both hearings was free of disagreement or conflict with regard to the facts of the claimant's employment and separation. The employer had no information on the details of the claimant's prior employment or job responsibilities as an HR manager. Given this, and the fact that the claimant provided documentary evidence at the remand hearing which corroborated her testimony, the claimant's testimony in this area is accepted as credible.

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 is disqualified from receiving unemployment benefits following her separation from her job with the employer.

In this case, the claimant submitted a written resignation which informed the employer that she was going to resign effective June 14, 2019. Therefore, the review examiner properly analyzed this case 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] . . . (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 statute explicitly places the burden upon the claimant to show that she is eligible to receive unemployment benefits. The review examiner concluded that the claimant had not carried her burden.

The review examiner found that the claimant resigned her position, "because she felt it was not a good fit for her." Consolidated Finding of Fact # 14. Overall, the claimant was unhappy, and she "felt she had no say in how things were done" in the employer's human resources office. Consolidated Finding of Fact # 8. The idea that the new job was not a good fit for her is, in unemployment law terms, an argument that the job was not suitable. The claimant has the burden to show that the employment was not suitable. Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981).

The Supreme Judicial Court (SJC) has consistently noted that "[s]uitability is not a matter of rigid fixation." Pacific Mills v. Dir. of Division of Employment Security, 322 Mass. 345, 350 (1948); President and Fellows of Harvard College v. Dir. of Division of Unemployment Security, 376 Mass. 551, 556 (1978); Graves, 384 Mass. at 768. As such, the suitability of a job depends on many factors, including the claimant's accustomed remuneration and her prior training and experience. See G.L. c. 151A, § 25(c). It is important to note that, even if a claimant had initially thought that the job would be suitable, "the job may have been objectively unsuitable from the start." Baker v. Dir. of Division of Unemployment Assistance, No. 12-P-1141, 2013 WL 3329009 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*. We think this is especially true when a worker has already established a claim for unemployment benefits and is seeking out new work, which may be somewhat different from his or her prior work. Our primary (but not sole) focus is not so much on the claimant's personal feelings or subjective belief as to whether she could do the job, but whether, objectively speaking, the job was suitable.

When determining whether the job was suitable for the claimant, we must interpret the relevant provisions of Chapter 151A liberally. *See* G.L. c. 151A, § 74.

In this case, we conclude that the job with the employer, which the claimant obtained in the benefit year of a claim filed many months prior to starting the work, was not suitable for her. Thus, the claimant had good cause attributable to the employer to quit the position.² In making this conclusion, we note two issues with the job with the employer. First, the claimant took a substantial pay cut when she accepted the job. She was earning significantly less money than she had in the past. Moreover, she was making less money while working more hours per week with this employer. Second, per her testimony, the claimant realized early on that the position was not a good fit for her. Consolidated Finding of Fact # 14. In her prior work as a manager, she was able to control a lot of human resources matters herself. *See* Consolidated Finding of Fact # 8. However, with this employer, she was one of many working in the human resources department, and her managerial skills (her most advanced type of skills) were not put to any use.³ To be sure, the job with the employer was in the same overall field that claimant had worked in for many years. *Compare Jacobsen v. Dir. of Division of Employment Security*, 383 Mass. 879 (1981) (rescript opinion) (remanding case to agency to determine if machine operator position was suitable for certified school teacher and former instructional aide). However, the difference in job responsibilities and the pay combine to render the job unsuitable for her.⁴

We, therefore, conclude as a matter of law that the review examiner's decision to deny 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 has carried her burden to show that the benefit year job she began with the employer was not suitable for her, and, thus, she had good cause attributable to the employer to quit the position.

² "Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of 'good cause.' *See Graves v. Dir. of Division of Employment Security*, 384 Mass. 766, 768 n. 3 (1981)." *Baker*, 2013 WL 3329009.

³ *See* DUA Service Representative Handbook, § 1130.

⁴ The claimant's decision to quit, after approximately two months working in a trial basis, was reasonable. As of that time, she had a good understanding of what the job was going to be. *See Jacobsen*, 383 Mass. at 879.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning June 16, 2019, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION – October 24, 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.

SF/rh