Claimant loan officer failed to prove that she had good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1). The record showed that the employer responded to her concerns about how her superiors treated her and tried to work with her in addressing performance issues. Because she abruptly quit within hours of a new work assignment policy, there was insufficient evidence to show that her workload became unmanageable.

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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 resigned from her position with the employer on July 2, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 3, 2019. 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 October 25, 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 and, thus, she 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 afford the claimant an opportunity to present further documentary evidence and to obtain additional evidence about her efforts to preserve her employment. 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 did not have good cause attributable to the employer to resign because she failed to give a new policy a reasonable trial period, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant was employed fulltime as a loan officer for the employer, a bank, from March 12, 2018 until the claimant quit on July 12, 2019.

2. The claimant's rate of pay was $17.20 per hour.

3. The employer's Lending Manager (Supervisor) was the claimant's immediate supervisor.

4. In January 2019, the claimant complained to the employer's HR Manager that her Supervisor and Vice President would not assist her when she had questions. The claimant complained that she felt uncomfortable when she had to ask for assistance because the Supervisor and Vice President would not make eye contact with her and would brush her off.

5. A few weeks later, [sic] HR Manager informed the claimant that the issue was addressed with the Supervisor and Vice President. At that time, the claimant indicated that the situation did improve.

6. On April 9, 2019, because of the claimant's scheduled time off for surgery, the employer notified the claimant that the schedule had to be changed so that the claimant would have to work on [sic] previously scheduled day off. The claimant had an appointment scheduled for her son on the day off. The claimant contacted the employer's HR Manager and was informed that she would have to work out the issue with her Supervisor. The claimant notified her Supervisor of her appointment with [her] son. The Supervisor still insisted that the claimant came [sic] in for work.

7. On May 2, 2019, the claimant sent an email to the HR Manager to complain about the Vice President. The claimant complained that the Vice President met with her to discuss a Mistake [sic] that Vice President was rude to her during the discussion.

8. On an unknown date, the HR Manager informed the claimant that she spoke to the Vice President about her conduct on May 2, 2019.

9. On June 27, 2019, the claimant called out sick from work. In a text message to her coworker, the claimant stated that she was nervous about speaking to the Supervisor about her mistake.

10. On July 1, 2019, the claimant notified HR of an error that she made at work. The HR Manager asked the claimant how can she help to prevent future errors. The claimant replied that she could slow down and not worry about the people waiting. The staff agreed and asked the claimant whether she needed additional training.

11. On July 1, 2019, the employer issued a warning to the claimant for making mistakes on several loan applications.

12. On July 1, 2019, at the end of the day, the employer notified employees that the receptionist was to call the claimant first prior to calling another employee to assist members with loan applications.

13. As of July 2, 2019, the other employees were assigned members when the claimant was already with a member.

14. The employer made the decision to allow the claimant more practice with applications as she was making a lot of mistakes and the employer was not satisfied with her performance.

15. The employer believed that the claimant's work was substandard.

16. On July 2, 2019, the claimant complained to the Supervisor that she could not take any member because she was overloaded for work. She believed she was being set up for failure as work would not be equally distributed.

17. On July 2, 2019, the claimant, after her lunch, informed the Supervisor that taking every member first was making her anxious because she had taken all the members that morning in addition to 3 additional real estate applications.

18. The Supervisor replied that she could not change the order in which the members were assigned because it was a decision made by her superiors.

19. On July 2, 2019, the claimant submitted her resignation with an effective date of July 12, 2019.

20. The claimant quit because she objected to the employer's policy to have the receptionist call her first prior to calling another employee to assist members with loan applications.

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. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Since the claimant voluntarily left her employment, her eligibility for benefits is properly analyzed pursuant to 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 . . . [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.

The express language of these statutory provisions places the burden of proof upon the claimant.

The review examiner found that the claimant resigned due to the employer's new July 1, 2019, policy assigning her to be the first to handle customers who came in for loans, before either of the other two loan officers. Consolidated Finding # 20. In her appeal, the claimant asserts that it was not simply the July 1 policy change that caused her to resign, but that she had been bullied and treated unfairly, and she refers back to several incidents since January, 2019. 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). Therefore, we consider whether the employer's conduct in any of these incidents created good cause to resign.

Consolidated Finding # 4 provides that, in January, 2019, the claimant felt that her supervisor and the Vice President made her feel uncomfortable when she asked for help, brushing her off and not making eye contact with her. However, the findings further provide that the Human Resources Manager addressed this concern and that the situation had improved within a few weeks. *See* Consolidated Finding # 5.

The claimant objected to the fact that, on April 9, 2019, her supervisor had forced her to work on an approved day off, which the claimant had scheduled in advance so that she could take her son to an appointment. The review examiner also found that the supervisor changed the schedule because the claimant was about to take time off for surgery. *See* Consolidated Finding # 6. Undoubtedly, this last-minute change created a personal burden for the claimant. However, Conlon requires us to look at the employer's conduct. Nothing in the record indicates that the employer's motive was other than reassigning staff to accommodate the fact that the claimant would be unavailable to work her next two Saturdays while recovering from surgery. *See* Exhibit 2g.[1] Despite the disruption to the claimant's plans, this was a valid business reason.

On May 2, 2019, the claimant felt that the Vice President was again rude to her because she had made a mistake. The claimant appropriately complained to the Human Resources Manager, who addressed the behavior with the Vice President. *See* Consolidated Findings ## 7 and 8. The Human Resource Manager testified that she then spoke to the claimant, who confirmed that things were better.[2]

[1] Exhibit 2g is an email to the claimant from her supervisor, dated April 9, 2019, explaining the reason for making the change. This exhibit is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

[2] For some reason, the review examiner did not include this in her findings. However, we note that this testimony is also part of the unchallenged evidence in the record.

Since the claimant continued working after these incidents, we can reasonably infer that they did not cause her to leave. She quit on July 2, 2019. Thus, we consider what the employer did at that time to trigger her resignation.

There was no dispute that the claimant had been making errors in processing loans and the employer was not happy about it. *See* Consolidated Findings ## 14 and 15. In late June, the claimant knew that she would have to confront her supervisor about another mistake. *See* Consolidated Finding # 9. Finally, on July 1, 2019, the employer took action. It issued a warning about mistakes the claimant had made on a number of loan applications and, late that day, implemented a policy to assign new loan applicants to the claimant first. *See* Consolidated Findings ## 11 and 12.

Again, we examine the employer's conduct. In conjunction with issuing the warning, the Human Resource Manager engaged the claimant in a discussion about how the claimant could prevent future errors, with the claimant agreeing on a strategy to slow down, not to worry about people waiting. *See* Consolidated Finding # 10. We believe the employer's warning and concurrent discussion were a reasonable response to address the claimant's performance errors.

As for the new policy, the review examiner accepted the employer's explanation that its purpose was to give the claimant more practice so that she would become more proficient. *See* Consolidated Finding # 14. Instead, the change immediately overwhelmed her. *See* Consolidated Finding # 16.

As a rule, 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). Even if the new policy, though designed with the best of intentions, made it too difficult for the claimant to perform her job with the type of accuracy the employer expected, the claimant will not be eligible for benefits unless she shows 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).

Consolidated Finding # 16 shows that, at some point early on July 2, 2019, the claimant complained to her supervisor that she felt overloaded and set up for failure. This was a reasonable step. At some point that day, the supervisor also said that she could not change the policy because the decision was made by her superiors. *See* Consolidated Finding # 18. This might suggest that further attempts to get the employer to rescind the policy would have been futile. The problem is that the claimant did not give the new procedure a chance to see if it actually made her job performance worse.

In Board of Review Decision 0022 5079 11 (Apr. 24, 2018), a restaurant manager resigned in part because the employer moved his junior manager to another restaurant, and the manager anticipated that, as a result, he would have to work an unreasonable number of hours. Because the manager did not stay long enough to prove that he could not get coverage or that his hours in fact became unmanageable, the Board held that the evidence fell short of proving that the employer's action substantially increased the claimant's work hours. Similarly, in the present appeal, the evidence falls short of demonstrating that the claimant's workload became unmanageable, because she resigned abruptly only hours after the new policy began. *See* Consolidated Findings ## 17 and 19.

Finally, we consider that, on appeal, the claimant argued that she had to quit due to her mental health. Specifically, she claimed that the work environment caused her to experience heightened anxiety and stress. "[A] 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons under" G.L. c. 151A, § 25(e), "which may render involuntary a claimant's departure from work." Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), *quoting* Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 847 (1992). In this case, the claimant has not presented evidence that her anxiety or stress level was so severe as to cause symptoms, require treatment, or that any medical practitioner urged her to leave her job. While we do not question that leaving this job was a good personal decision for the claimant, the evidence simply fails to show that her mental health concerns rose to urgent, compelling, and necessitous circumstances within the meaning of G.L. c. 151A, § 25(e).

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she left her employment for good cause attributable to the employer or due to urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning July 14, 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 - March 26, 2020

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT 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