

**Although the claimant had complaints about how the employer treated staff and residents, the employer investigated her concerns. The record does not support that the employer retaliated against her for filing an ethics report and subjected her to unwarranted disciplinary action. She did not show good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0033 5519 47**

### 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 December 1, 2019. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on May 5, 2020. 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 December 23, 2020. 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 or urgent, compelling, and necessitous reasons 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 give the claimant an opportunity to participate in the hearing. 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 resigned without good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law, where the claimant had alleged unaddressed workplace concerns, retaliation for filing an ethics complaint, and unwarranted disciplinary action in her resignation letter.

### 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 as a full-time nurse manager for the employer, a nonprofit human services agency, between 07/10/2017 and 12/01/2019, when she separated.
2. The claimant's supervisor was the assistant director. The claimant's upper-level manager was the director of the [Town A] area.
3. The claimant worked in house A.
4. In October 2018, the claimant transported client A from another facility to house A. The claimant handwrote client A's diagnoses in his records. By November or December 2018, the claimant did not see client A's diagnoses in his medical records. The claimant informed the quality assurance nurse. Thereafter, client A's diagnoses were in his medical record.
5. Client A assaulted staff in house A.
6. Client B was a smoker and was not provided an area to smoke. Client B "wanted to do other things" and his requests were not fulfilled. The claimant believed that client B would have benefitted from a different type of bed. Client B was not getting out into the community or to the store.
7. The claimant believed resident rights were violated for residents in house A.
8. The claimant reported to the employer her concerns about issues in house A.
9. The employer issued the claimant a step 1 verbal warning in July 2019, with which she disagreed.
10. The claimant filed an ethics report, including allegations there was not enough staffing at the program and that client A was assaulting staff. The employer conducted an investigation into the claimant's concerns alleged in the ethics report.
11. There were a couple of meetings between the claimant and the human resources department starting on 07/18/2019. The employer's investigation ended in late July 2019. The claimant and the human resources director met on 07/31/2019 to discuss the findings of the employer's investigation.
12. During the 07/31/2019 meeting, the claimant requested a transfer to a per diem non-management role. The employer made an exception to its policy prohibiting transfers for employees on disciplinary actions, and approved the claimant to transfer to a per diem role.
13. The claimant found a position at house B and called to schedule an interview. An interview did not occur. The claimant's transfer to house B did not occur.

because the employer did not have a replacement for the claimant at house A. The claimant did not transfer to a per diem role and continued as a full-time employee in a management role.

14. In approximately October 2019, client C told the claimant that the program manager said the claimant was not doing any work. The employer received a report from client C that the program manager stated that the claimant “sits around and does nothing all day.” The claimant did not witness the program manager make any such comment. The director of the [Town A] area investigated client C’s report.
15. On 10/28/2019, the director of the [Town A] area, the claimant, program manager, and the then-assistant director met to discuss client C’s report. The employer did not consider client C to be a reliable reporter and the program manager denied making the comment. The employer did not have concerns that the claimant was not performing her work tasks. The program manager does not supervise the claimant.
16. The claimant felt as though the employer did nothing about client C’s report. The claimant wanted the employer to meet with her and the program manager and to tell the program manager that she is not the claimant’s supervisor and not to discuss the claimant’s work performance with anyone else.
17. Sometime after 10/28/2019 in late October 2019, the claimant tendered her first letter of resignation. The claimant resigned because she disliked the alleged comment from the program manager as reported by client C, she was dissatisfied with the employer’s response to the alleged comment from the program manager, and the claimant felt as though she was being retaliated against for filing the ethics complaint.
18. The employer was not retaliating against the claimant for filing the ethics complaint, the investigation of which concluded in July 2019.
19. The human resources department asked the claimant to re-write her resignation letter.
20. The employer drafted a step 2 written warning to issue the claimant for attendance, failure to communicate tardiness and absence, and boundary issues, which was reviewed by the human resources department prior to issuance.
21. On 11/05/2019, the claimant was called to meet at 1:00 p.m. for the issuance of the step 2 written warning. The claimant complained to human resources that she was not notified in advance (on a different day) that the step 2 written warning would be issued. The human resources business partner was on the phone during this meeting on 11/05/2019 at 1:00 p.m. The claimant disagreed with the contents of the 11/05/2019 step 2 written warning.

22. On 11/06/2019, the human resources business partner informed the claimant that she was not eligible for a transfer. The employer decided not to allow a transfer to another position or to per diem status because the claimant was on a step 2 written warning.
23. On 11/08/2019, the claimant submitted her re-written letter of resignation dated 11/08/2019 to the director of human resources and to the nursing director, effective 12/01/2019. The 11/08/2019 letter states, in part, "I was asked by HR to Re-write this letter of intent to resign as of December 1st, 2019."
24. The claimant's last day worked was 11/11/2019. The claimant was paid through 12/01/2019.
25. The claimant did not request a leave of absence prior to tendering her resignation.
26. At the time the claimant tendered her resignation, she was not facing termination. Following a step 2 written warning is step 3 suspension and step 4 termination.

#### Credibility Assessment:

During the hearing, the claimant was adamant that she submitted a letter of resignation in late October 2019, prior to the issuance of the step 2 written warning issued on 11/05/2019. While that first letter of resignation is not an exhibit in the record, the review examiner credits this testimony because the letter dated 11/08/2019 explicitly states "I was asked by HR to Re-write this letter of intent to resign as of December 1st, 2019" and it is not logical that the claimant would include such language if she did not submit a prior letter.

#### 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 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 conclude, as the review examiner did, that the claimant did not have good cause attributable to the employer for resigning her position.

Because the claimant resigned from her employment, we analyze her eligibility 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 . . . .

Under the foregoing provision, the claimant has the burden to prove that she is eligible for benefits. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985). When a claimant alleges that resignation was for good cause attributable to the employer, the analysis focuses 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). To determine if the claimant has carried her burden to show good cause under G.L. c. 151A, § 25(e)(1), 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).

Throughout her tenure, the claimant believed that the employer violated the rights of residents and failed to maintain sufficient staffing levels. See Consolidated Findings ## 7 and 10. The claimant was also concerned that a resident had assaulted staff. See Consolidated Finding # 5. Most recently, the claimant had been aggrieved by an alleged comment made by a colleague. See Consolidated Finding # 14. The findings also show, however, that the employer responded to the claimant's concerns by investigating them and meeting with her to discuss the results of those investigations. See Consolidated Findings ## 11 and 15.

According to Consolidated Finding # 17, the claimant also believed that the employer retaliated against her for filing an ethics report in July, 2019. However, the review examiner made a separate finding that the employer did not retaliate against the claimant for filing the report, and the record supports this finding. See Consolidated Finding # 18. Although the claimant testified that the employer wrongfully prohibited her from transferring to a per diem role in retaliation for the ethics report, the evidence establishes, and the review examiner found, that the employer's decision to make the claimant ineligible for a transfer occurred after the claimant initially tendered her resignation, not before. See Consolidated Finding # 22. In addition, the employer had given the claimant preferential treatment after her first warning by making a policy exception that allowed her to transfer to a *per diem* role, even though she had a record of discipline. See Consolidated Finding # 12. While the employer did not allow a transfer to take place, it had a legitimate business reason for that decision because it could not readily find a replacement for her current position. See Consolidated Finding # 13.

The claimant also resigned, in part, because she felt as though she had received unwarranted disciplinary action from the employer. See Exhibits 3 and 4. A workplace reprimand or other form of discipline, if reasonable, does not create good cause attributable to the employer to quit a job. See Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 731 (1986). Here, there is nothing in the record to show that the discipline the claimant received was unreasonable. Instead, the evidence establishes that the employer's human resources department reviewed the written warning prior to delivering it to the claimant, which suggests that it took steps to ensure the veracity of the information it used in support of the discipline. See Consolidated Finding # 20. The warning also demonstrates a reasonable attempt on the part of the employer to help the claimant improve her performance. For example, the warning noted that the claimant's "attendance has been addressed in past supervisions. Attendance continues to be a concern . . ."

and that it expected the claimant to “maintain her attendance at an acceptable rate . . .” and “inform her supervisor in advance” if she was going to be late. *See* Exhibit 4.<sup>1</sup>

If the review examiner had found that the employer took adverse actions against the claimant for reporting valid workplace concerns, that might constitute a reasonable workplace complaint and good cause to leave. However, the review examiner found that the employer had not retaliated against her for filing her ethics complaint. *See* Consolidated Finding # 18. Rather, it appears as though the claimant resigned because she was unhappy with how the employer addressed her concerns and because it had counseled her about her performance. 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). As a result, we do not believe there are sufficient findings of fact to conclude that the claimant had a reasonable workplace complaint against the employer that would establish good cause attributable to the employer for resigning.

We, therefore, conclude as a matter of law that the claimant left the job voluntarily without good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

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<sup>1</sup> 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).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning January 12, 2020, 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 18, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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](http://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.

JMO/rh