The claimant quit her position for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1), where the review examiner made findings of fact that she was treated unfairly by supervisory employees. Given the nature of the situation, and her co-workers' experiences with reporting problems to the employer, there are sufficient findings to show that preserving her job would have been futile.

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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 reverse.

The claimant resigned from her position with the employer on January 19, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 13, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on April 20, 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 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant quit her position due to the unfair treatment she experienced from supervisory employees.

Findings of Fact

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

1. For the last 24 years, the claimant worked full-time as a respiratory therapist for the employer's medical center located at a hospital in [Town A], MA. When the

hospital closed in November, 2019, she transferred to the employer's hospital located in [Town B], MA.

2. Throughout her career, the claimant had always received positive performance reviews and had never been disciplined for her performance.

3. The employer's location in [Town B] provided a higher level of patient care than the [Town A] location where the claimant had previously worked. As a result, the claimant needed additional training for the emergency department and specialty care nursery.

4. The claimant reported directly to the manager. She was also assigned to work with two preceptors who were responsible for supervising her training and orientation to the new hospital and overseeing her on a daily basis.

5. The claimant believed the preceptors treated her and the other newly hired respiratory therapists unfairly with regard to their meal breaks and break times. She also found them to be overly critical and often disagreed with them.

6. When the preceptors mandated therapists remain available at all times and asked her to take breaks in the room they were working in, the claimant would complain to them that she did not want to take her break in a room that contained oxygen tanks and blood machines, she wanted to take it in the breakroom.

7. On one occasion, she also told the preceptor it was unfair that she was not given a meal break until near the end of her twelve-hour shift, while a veteran employee was given a meal break after just three hours.

8. The claimant believed she was once falsely accused by the preceptors of exceeding her 30-minute break allowance and pointed out to them that her cellphone stopwatch proved she was only gone for 17 minutes.

9. The claimant complained often to her peers about the preceptors. A co-worker told her the preceptors liked to "haze" the new staff. She also told her if she spoke up against them, she could get a worse schedule.

10. The claimant never complained to the manager about the preceptor's behavior because she believed the manager would not do anything about it. A co-worker informed her that when she had complained, the manager told her "you're an adult, deal with it yourself."

11. The claimant never disclosed that she was being harassed or mistreated to the human resource manager or indicated the preceptors were treating her unfairly. She never discussed any meal break violations with the HR manager at any time.

12. On Thursday January 16, the manager asked to meet with the claimant to give her feedback. When the claimant arrived at the meeting, the human resource manager was also present.

13. The manager proceeded to tell the claimant she was being placed on a 30-day action plan because [sic] based on feedback from the preceptors regarding her performance.

14. The action plan listed areas the claimant needed improvement in, including critical thinking skills and knowing when to ask for help, improved communication and availability, and the ability to work independently. It also stated, "failure to improve would result in further communication up to an including disciplinary action."

15. During the course of the meeting the manager criticized the claimant's critical thinking skills and told her that she had a learning disability. She also criticized the claimant for taking the stairs instead of taking the elevators. The manager also discussed an incident from three months prior, at the [Town A] location, when the claimant had failed to scan a patient medication. The manager had never worked at the claimant's prior location, nor had she ever been the claimant's supervisor or manager prior to November. The claimant had never received any type of discipline for any instances of poor performance at her prior job or prior to the January 16 meeting.

16. The claimant disagreed with the manager's assessment of her performance and found it be overly critical. The claimant did not discuss any issues she had with the preceptors or the manager during the meeting or bring up any feelings of mistreatment or harassment at that time. The claimant signed the action plan, although she disagreed with it, and left the meeting.

17. The manager did not tell the claimant she would be discharged if she did not meet the requirements of the action plan.

18. The claimant called out sick to work on January 17 because she was stressed and upset from the meeting with the manager.

19. On January 19, the claimant submitted her resignation. The claimant quit her job because she believed the manager and preceptors treated her unfairly throughout the course of her employment and would continue to do so.

20. Prior to quitting, the claimant never discussed her concerns about harassment with the human resource manager or indicated that the manager or preceptors mistreated her.

21. The HR manager contacted the claimant to speak with her, but the claimant declined to speak with the manager.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that the claimant has carried her burden to show that she quit her job for good cause attributable to the employer.

The claimant quit her job with the employer on January 19, 2020. Therefore, the claimant's eligibility 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 . . . .

Under this section of law, the claimant has the burden to show that she is eligible to receive unemployment benefits. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993). In this case, the review examiner concluded that the claimant had not carried her burden. We disagree.

When a claimant contends that her 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). In this case, the review examiner found that the claimant "quit her job because she believed the manager and preceptors treated her unfairly throughout the course of her employment and would continue to do so." Finding of Fact # 19. In her decision, the review examiner ultimately concluded that the claimant was not entitled to benefits, because "the claimant has not established she quit her employment due to a reasonable belief she was about to be discharged for non-disqualifying reasons." We think that this conclusion misses the main thrust of the claimant's argument during the hearing, encapsulated in Finding of Fact # 19, which was that she quit due to the unfair and unreasonable treatment she was receiving. Regardless of whether the claimant reasonably thought that she could soon be discharged from her job, she can still carry her burden if she shows that she was treated unreasonably.

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. The review examiner found that, generally, the claimant "believed" that the supervisory preceptors treated her unfairly and were overly critical. Finding of Fact # 5. More specifically, the claimant was asked to take her meal breaks in rooms where there were oxygen tanks and blood machines. Finding of Fact # 6. On one occasion, she was not given a timely meal break. Finding of Fact # 7. Another time, she was falsely accused of exceeding her thirty-minute meal break. Finding of Fact # 8. Finally, during a meeting on January 16, 2020, the claimant's manager told her that she

had a learning disability and brought up an alleged incident that had occurred prior to when the claimant began working for the manager. Finding of Fact # 15.

Taken together, we think that the claimant did have a reasonable workplace complaint regarding her on-the-job treatment. The two most egregious incidents were the meal break location issue and the final meeting comments by the claimant's supervisor. Finding of Fact # 6 indicates that the claimant was required to take breaks in rooms in which she worked. This meant that she would be taking breaks in locations which contained medical equipment. Eating lunch in these rooms was potentially unsanitary, and such a condition can create good cause to quit. *See* Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979).

As to the January 16, 2020, meeting, we first note that a reasonable workplace reprimand does not create good cause to quit a job. *See* Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 731 (1986). However, the manager's comment on the claimant's mental capabilities was disparaging and unconstructive. We do not think that it was reasonable for the manager, in a disciplinary meeting, without any invitation or voluntary disclosure by the claimant, to specifically comment on the claimant's mental capabilities. It is also not clear how that was relevant to the other items discussed at the meeting. Therefore, we think that there are sufficient findings of fact to conclude that the claimant had a reasonable workplace complaint against the employer.

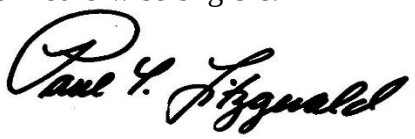
Our inquiry does not end there, however. The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). The touchstone idea is that the claimant's actions must have been reasonable under the circumstances. *See* Crane, 414 Mass. at 661 (noting that circumstances of each case must be objectively evaluated); Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 284 (1985) (reasonable belief sufficient to carry burden under G.L. c. 151A, § 25(e)(1)); Kowalski v. Dir. of Division of Employment Security, 391 Mass. 1005, 1006 (1984) (rescript opinion) (requiring reasonable preservation efforts, unless futile).

The review examiner's findings of fact make clear that the claimant took minimal steps to try to correct the problems she was experiencing in the workplace. *See* Findings of Fact ## 10, 11, 16, and 20. Nevertheless, we conclude that the claimant reasonably believed that reporting her concerns would not have resulted in changes to her employment situation. *See* Finding of Fact # 10 (claimant did not complain about preceptors' behavior "because she believed the manager would not do anything about it"). First, it is apparent from the findings of fact that the claimant did complain to the preceptors about how she was treated. *See* Findings of Fact ## 6–8. The findings do not indicate that speaking up to the people who were directly supervising her did anything to remedy the workplace situation. Second, we note that several of the claimant's co-workers told her that complaining would do very little or could make the situation worse. *See* Findings of Fact ## 9 and 10. Finally, even if we could criticize the claimant for not making her concerns known to her manager prior to quitting, the manager was not acting reasonably. Her behavior during the January 16, 2020, meeting indicates that she held a negative view of the claimant, and this behavior would have led the claimant to reasonably believe that the manager would not be receptive to her concerns.

Of course, the claimant could have shared her concerns with human resources, and, again, this is noted several times in the review examiner's findings of fact. A claimant must show reasonable efforts to preserve her employment — not that she had "no choice to do otherwise." Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2006) (citation omitted). And when we view what is reasonable, we are mindful that G.L. c. 151A must be "construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family." G.L. c. 151A, § 74. Here, the claimant was treated poorly by both the preceptors and her manager, and her co-workers told her that complaining could either make her situation worse or fall on deaf ears. Moreover, the claimant offered undisputed testimony during the hearing as to what she experienced and what she was feeling at the time of her separation.[1] Given the circumstances, we believe that the claimant has shown that it was futile to take further steps to try to preserve her employment.

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 shown that she quit her job for good cause attributable to the employer due to the unfair treatment she experienced from supervisory employees.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 19, 2020, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS Paul T. Fitzgerald, Esq.
DATE OF DECISION - June 29, 2020 Chairman

Charlene A. Stawicki, Esq.
Member

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 ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until July 1, 2020[2]. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day following the thirtieth day.

[1] The employer did not attend the hearing or submit a memorandum to the Board after the Board accepted the claimant's application for review. The employer certainly submitted evidence for consideration, *see* Exhibits 1, 3, and 5, but did not further explain the documentation to the review examiner, who is the fact-finding in this matter.
[2] *See* Supreme Judicial Court's Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (coronavirus) Pandemic, dated 5-26-20.

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