

Claimant auto body technician who resigned because he did not get the pay raise he asked for did not establish good cause attributable to the employer for quitting. However, when his manager became verbally abusive because the claimant had given notice and the claimant felt unsafe returning to work, the claimant established good cause attributable to the employer for not working through his notice period.

**Board of Review
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Issue ID: 0033 9919 36

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. We affirm the disqualification from the date the claimant told the employer would be his last day worked, but we reverse and find him eligible for benefits during his two-week notice period.

The claimant resigned from his position with the employer on February 25, 2020, giving the employer two weeks' notice. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 24, 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 18, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant neither voluntarily left employment for good cause attributable to the employer, nor involuntarily left for 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 accepted the case for review. Our decision is based upon a review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's decision to quit because the employer did not give him a pay raise he felt he deserved did not constitute good cause attributable to the employer for resigning, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full time as an autobody technician for the employer, an automotive repair business, from August 27, 2019 until February 25, 2020, when he quit work.
2. The claimant's work schedule was Monday through Friday from 9:00 a.m. to 5:00 p.m.
3. The claimant was paid \$13.00 per hour.
4. The claimant's immediate supervisors were the Shop Managers.
5. After six months of working there, the claimant felt he deserved a pay raise because he learned a lot, he knew where everything was in the shop, and other employees were hired making a higher wage than he.
6. The claimant asked the employer for a pay raise. The employer denied the claimant's request.
7. On or about February 25, 2019, the claimant provided a verbal two-week notice to resign.
8. The claimant quit work because he was not given a pay raise.
9. The claimant did not work his two-week notice period because the other Shop Manager called him "all kinds of swear words" and the claimant didn't feel safe returning to work.
10. On March 24, 2019, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification under Section 25(e)(1) of the Law beginning March 1, 2020.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate 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. While we agree with the review examiner's conclusion that the claimant did not establish good cause attributable to the employer for quitting his job in general, we believe the claimant established good cause attributable to the employer for failing to work his two-week notice period, as discussed more fully below.

The review examiner denied benefits after analyzing the claimant's separation 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 G.L. c. 151A, § 25(e)(1), it is the claimant's burden to establish that his separation was for good cause attributable to the employer. The review examiner concluded the claimant had not met his burden.

The review examiner found that the claimant gave his two-week notice on or about February 25, 2020. She found that the reason the claimant quit was because he did not receive the pay raise that he had asked for after working for the employer for six months. We agree with the review examiner that the employer's decision not to give the claimant a pay raise did not constitute good cause attributable to the employer for quitting. *See Sohler v. Dir. of Division of Employment Security*, 377 Mass. 785, 789 (1979) (general and subjective dissatisfaction with working conditions does not provide good cause to leave employment under G.L. c. 151A, § 25(e)(1)).

However, we note that the review examiner also found that, upon giving his two-week notice to the employer, one of his managers called the claimant "all kinds of swear words," causing the claimant to feel unsafe returning to work.¹ Because of this abusive conduct by one of his managers, the claimant did not work through his two-week notice period.

While we agree with the review examiner that the claimant failed to establish good cause attributable to the employer for giving his notice to quit, we believe that the employer's abusive conduct — which the review examiner found made the claimant feel unsafe about returning to work — amounts to good cause attributable to the employer for the claimant's failure to work through his notice period. The claimant's situation is analogous to an employee who give notice to quit for non-disqualifying reasons, but the employer chooses to discharge the claimant, rather than allowing them to work through that notice period. Under such circumstances, the claimant is entitled to benefits during the notice period when he was out of work through no fault of his own. *See Connolly v. Dir. of Division of Unemployment Assistance*, 460 Mass. 24, 25 (2011) (the purpose of the unemployment statute is to provide temporary relief to persons who are out of work through no fault of their own) (further citations omitted).

We, therefore, conclude as a matter of law that the claimant quit without good cause attributable to the employer. However, we further conclude that the claimant established good cause attributable to the employer for not working through his two-week notice period.

¹The claimant testified that after one manager noticed the other manager, the second manager "called me all types of swear words and derogatory words, and this and that, and I didn't feel safe going back to work, so I left that day." The claimant's undisputed testimony, while not entirely incorporated into the review examiner's findings, 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).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits from February 25, 2020, through March 10, 2020. The claimant is denied benefits from March 11, 2020, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.



Paul T.

BOSTON, MASSACHUSETTS

Fitzgerald, Esq.

DATE OF DECISION - May 12, 2020

Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. 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 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 June 1, 2020². 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.

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.

JPC/rh

² See Supreme Judicial Court's Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-27-20.