

The claimant submitted a resignation letter when the employer failed to raise her wages and increase her hours as promised two years before at hire. Held this constitutes good cause attributable to the employer to resign within the meaning of G.L. c. 151A, § 25(e)(1). Subsequently, the employer closed its business due to COVID-19 before the end of the claimant's notice period. Since the claimant had not engaged in misconduct or violated any policy, held she remained eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).

**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: 0051 3465 48

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award 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 March 13, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 6, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on June 11, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was discharged from her employment without having engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violating a reasonable and uniformly enforced rule or policy of the employer, and, thus, she was not disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to clearly identify exhibits and to render subsidiary findings of fact from the record pertaining what caused the claimant's separation. Thereafter, the review examiner issued her consolidated findings of fact, which also clearly identify the exhibits. 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 was discharged, is supported by substantial and credible evidence and is free from error of law, where the record shows that the claimant voluntarily submitted her resignation due to unfulfilled employer promises about wage and hour increases, but the employer closed its business before the end of her notice period.

Findings of Fact

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

1. The claimant worked as an Assistant Teacher for the employer, a childcare center, from 11/20/17 until 3/12/20 when she last performed work.
2. The claimant was hired to work 32 hours a week, earning \$13.00 an hour.
3. The claimant submitted a resignation letter to the employer on 3/9/20.
4. Two months prior to submitting her resignation letter, the claimant spoke to the owner and asked if her hours and wages were going to be increased.
5. The employer told the claimant yes, they were going to be increased, but asked the claimant to wait a little bit more. The claimant reminded the employer that she had been continually asking for more hours, but the employer has been hiring new employees instead.
6. When hired in November of 2017, the owner had promised the claimant 40 hours a week and had told the claimant that every six months, she would get an increase in her wages.
7. Since the claimant's date of hire, the employer did not provide the claimant with 40 hours of work per week or an increase in her wages.
8. The claimant had told the employer in her resignation letter, dated 3/9/20, that her resignation would take effect two weeks from the date of the letter and that she was leaving for personal reasons.
9. The claimant last worked on 3/12/20 after which she received a call from the employer on Friday 3/13/20 informing her that she did not need the claimant anymore because she was closing the center due to [COVID-19].
10. The employer closed the center on 3/13/20.
11. The DUA fact-finding questionnaire dated 8/13/20 and completed by the claimant is marked as Exhibit 4.
12. The DUA fact-finding questionnaire dated 8/13/20 and completed by the employer is marked as Exhibit 6.
13. The DUA fact-finding questionnaire dated 3/30/21 and completed by the claimant is marked as Exhibit 3.
14. The DUA fact-finding questionnaire dated 5/5/22 and completed by the claimant is marked as Exhibit 2.
15. The two letters from the claimant to [A] dated 3/9/20 was [sic] made part of Exhibit 7.

16. Exhibit 7 consists of the two letters from the claimant to [A] dated 3/9/20; a Paystub with a pay date of 3/24/20; and the screen shots of the two envelopes.

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. While we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant is eligible for benefits, we do so on different grounds.

The first question is whether the claimant quit or was discharged. If the claimant resigned, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), and the statute assigns the burden of proof to the claimant. If the employer discharged the claimant, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(2), and the employer has the burden. Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

Subsections (1) and (2) under G.L. c. 151A, § 25(e), provide, 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, (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

The present case presents facts which require us to consider both sections of law.

The claimant submitted a written letter of resignation on March 9, 2020, stating that she planned to work for two more weeks. Consolidated Findings ## 3 and 8. Nothing in the record indicates that the employer failed to accept her resignation at that time. However, before completing her two-week notice period, the employer told her on March 13, 2020, not to report for work thereafter, because it was closing its business. *See* Consolidated Finding # 9.

In our view, the resignation letter establishes that the claimant voluntarily initiated her separation. This is in harmony with the purpose of the unemployment statute, which is to deny benefits to claimants who create their own unemployment. It was the claimant who "set in motion the chain of events" that led to her being out of work with her resignation letter to the employer. LeBeau v. Comm'r. of the Department of Employment and Training, 422 Mass. 533, 536 (1996); *see also*

Board of Review Decision BR-109787 (Aug. 25, 2011) (letter of resignation submitted with a departure date to be negotiated).

Next, we consider whether the claimant's resignation was for good cause attributable to the employer. 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).

Although not stated in her resignation letter, the record indicates that she resigned because the employer did not provide the wages and hours promised at hire. The consolidated findings show that the employer told the claimant that her hours would be increased from 32 to 40 hours a week, and that she would receive a wage increase every six months. This did not happen, even though the claimant reminded the employer about it on several occasions. *See* Consolidated Findings ## 4–7. These facts indicate that, at hire, the employer misled the claimant about the terms and conditions of her employment, and they constitute good cause attributable to the employer to resign.

In order to be eligible for benefits, the claimant must also show that she made a reasonable attempt to correct the situation before resigning or that such an attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). Consolidated Finding # 4 shows that, as recently as two months before deciding to resign, the claimant tried again to get the employer to follow through with its promise to increase her wages and hours. We are satisfied that she made a reasonable attempt to correct the problem and that, since it had been more than two years since she was hired, further attempts would have been futile.

Because the employer involuntarily terminated the claimant's employment a week early while she remained ready and willing to continue working through her two-week notice period, we must also consider whether the claimant remained eligible for benefits under G.L. c. 151A, § 25(e)(2). Since the employer told the claimant to stop working because it was closing its business and not because she engaged in any form of misconduct or violated any rule or policy, there is no basis for disqualifying her under G.L. c. 151A, § 25(e)(2).

We, therefore, conclude as a matter of law that the claimant established good cause attributable to the employer to resign pursuant to G.L. c. 151A, § 25(e)(1). We further conclude that the employer then prematurely ended the claimant's employment for reasons that did not constitute deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced rule or policy within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning March 8, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 26, 2022



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