

The claimant had a reasonable workplace complaint, where one of her coworkers was consistently rude to her and made it very difficult for her to carry out one of her duties. However, the claimant did not take reasonable steps to preserve her employment where she failed to report the coworker's specific behavior to the employer and did not show that doing so would have been futile. Absent a reasonable attempt to preserve her employment, the claimant is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0056 3244 81

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 benefits. Benefits were denied on the ground that the claimant left her employment without good cause attributable to the employer or for urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e).

The claimant had filed a claim for unemployment benefits, which was approved in a determination issued by the agency on January 20, 2021. The employer appealed to the DUA Hearings Department. Following a hearing on the merits attended by both parties, the review examiner reversed the agency's initial determination in a decision rendered on March 10, 2021. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On August 17, 2021, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant's reasons for resigning from her employment. Both parties participated in the remand hearing. After the consolidated findings of fact were issued, the Board remanded the case once again for further evidence to obtain a more complete record of the events that led to the claimant's separation from the employer. Both parties participated in the second remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's decision to resign in order to relocate to another state was disqualifying pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant left her employment because she had several complaints related to her work environment.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant worked full-time as a domestic violence advocate for the employer, a city, from August 24, 2009, until September 1, 2020, when she left work.
2. The claimant worked Monday through Friday from 8:00 a.m. to 4:00 p.m.
3. The claimant was paid an annual salary of \$56,376.00.
4. The claimant worked for the employer's police department.
5. The claimant was a union employee.
6. The claimant's immediate supervisor was the Lieutenant in charge of the Bureau of Criminal Investigations (the Lieutenant).
7. The claimant's salary was funded by the Violence Against Women (VAWA) Stop Grant. The 2019 Stop Grant identified the Lieutenant in charge of the Bureau of Investigations as the claimant's supervisor.
8. The claimant worked with victims of domestic violence and sexual assault.
9. The claimant was required to immediately report a restraining order violation to either her immediate supervisor, the OIC on duty, or another superior.
10. Prior to May 14, 2020, the claimant reported potential restraining order violations to either her immediate supervisor, the Officer in Charge (OIC) on duty, a detective in the bureau, or a patrol officer. The claimant did not report the violation to her supervisor prior to reporting it to one of the other individuals.
11. In an email dated January 23, 2020, the Captain instructed the claimant to consult with the Lieutenant on any work-related questions or concerns.
12. On the morning of Thursday, May 14, 2020, prior to 9:13 a.m., a victim notified the claimant via her work cell phone that an individual the victim had a restraining order against called her.
13. The call was a violation of the restraining order.
14. The claimant did not immediately notify the Lieutenant, the OIC on duty, a detective, a patrol officer, or any other police department superior of the restraining order violation after she received the call from the victim.

15. On the morning of May 14, 2020, at 9:13 a.m., the claimant notified the District Attorney's Office via telephone of the restraining order violation.
16. On May 14, 2020, the claimant did not notify the Lieutenant via telephone of the restraining order violation.
17. On May 14, 2020, the claimant went to the police station. At approximately 2:30 p.m., the claimant told the Lieutenant of the restraining order violation reported to her by the victim that morning.
18. The Lieutenant told the claimant that the victim needed to report the violation herself for the police to investigate.
19. On May 15, 2020, the victim called the claimant again and expressed dissatisfaction that the police didn't investigate the violation.
20. On the morning of May 15, 2020, the claimant contacted the Lieutenant via telephone and reported the call from the victim she received that morning.
21. On May 15, 2020, the Officer in Charge on duty (OIC A) became aware of the restraining order violation and sent a patrol officer to investigate the incident.
22. On May 18, 2020, at 9:40 a.m., via email, the Captain asked the claimant to provide him with a timeline of [the] domestic violence violation reported to her on May 14, 2020, and the reason for her delay in reporting it.
23. On May 18, 2020, at 10:35 a.m., via email, the claimant provided the Captain with a timeline and a response to his request for a reason for her delay in reporting the violation. The claimant wrote, "I followed the chain of command as directed on Thursday afternoon in person and let my supervisor" the Lieutenant "know of the incident."
24. On May 18, 2020, at 2:43 p.m., via email, the Captain instructed the claimant that going forward she was to report any violation to the OIC on duty to ensure a patrol officer documents it.
25. The OIC on duty is responsible for sending a patrol officer to investigate any potential restraining order violation, domestic violence report or sexual assault report.
26. The Lieutenant continued to be the claimant's immediate supervisor.
27. On May 22, 2020, the Captain met with the claimant and the Lieutenant to discuss the reporting of the May 14, 2020, restraining order violation. The claimant refuted that there was a delay in her reporting it because she reported it to the Lieutenant on the afternoon of the same day it was reported to her. The

claimant told the Lieutenant OIC A was difficult to work with. The Lieutenant asked what the claimant meant by difficult. The claimant said OIC A was short, direct and matter of fact in his responses to her.

28. It is OIC A's personality to be matter of fact, short and direct in his conversation with others.
29. On May 25, 2020, the Captain issued a Letter of Counseling to the claimant for Unsatisfactory Performance: "failure to conform with work standards established for their particular position, failure to take appropriate action on the occasion of a condition deserving police attention."; and Neglect of Duty: "Employees shall be attentive to and not neglect their duty." The Letter advised the claimant she was being disciplined because of her delay in reporting a violation of a restraining order immediately to the Lieutenant or the Officer in Charge when she was apprised of it on May 14, 2020. The Letter also advised the claimant: "The Letter of Counseling is to correct such behavior. As such, it will be included in your personnel file. Further disciplinary action, on any matter, may result in reprimand, suspension, transfer or dismissal."
30. The claimant felt the Captain harassed her by issuing her the Letter of Counseling.
31. The claimant objected to OIC A reporting to the Captain the situation that led to the discipline instead of addressing it directly with her or the Lieutenant.
32. The claimant had not been disciplined by the employer prior to May 25, 2020.
33. On May 27, 2020, via email, the claimant requested to have union representation for a meeting with the Captain to discuss the Letter of Counseling.
34. On May 28, 2020, the claimant and her union representatives met with the employer's human resources representative, the Captain, a Lieutenant and the Chief. The claimant asked for the Letter of Counseling to be removed from her personnel file.
35. The claimant was informed that the Letter of Counseling would not be removed from her file.
36. A union representative told the claimant he felt the Letter of Counseling was not the appropriate action, but he felt if the claimant filed a grievance to have it removed from her personnel file, the employer would find a way to fire her in retaliation for filing the grievance.
37. The claimant did not file a grievance.

38. No member of [the] police department told the claimant she would be discharged.
39. The Chief was “not friendly” with the claimant after she declined to meet with him without the union about her objection to the Letter of Counseling.
40. After she was provided with the instruction, the claimant reported domestic violence calls directly to the Officer in Charge on duty.
41. When OIC A was on duty and the claimant reported a call to him, he would ask the claimant questions, such as: What are you doing in my office? Why did you have to bring this to me now? Why can’t this wait? Why don’t you go ask your boss?
42. OIC A spoke in a curt manner to the claimant.
43. OIC A did not swear at the claimant.
44. The claimant told OIC A to discuss the new process with the Lieutenant if he objected to her reporting issues directly to him.
45. The claimant did not make a formal complaint about the OIC A to the employer’s Human Resources Office.
46. On August 5, 2020, the claimant provided the employer with a letter that she was resigning from work to relocate.
47. On August 10, 2020, the claimant provided the employer with a revised letter that reflected she was retiring.
48. The claimant quit work because she objected to the Captain issuing her the Letter of Counseling; she objected to the change in the process of reporting a domestic violence/sexual assault reports; and she objected to the annoyance OIC A expressed towards her when she reported domestic violence/sexual assault reports directly to him.
49. After the claimant quit work, she relocated to California.
50. Approximately a week after the claimant arrived in California, she was offered a part time job as a waitress at a restaurant. The claimant worked for the employer for three weeks until she was discharged from employment.
51. The claimant filed an initial claim for benefits effective October 22, 2020.
52. On October 22, 2020, the claimant electronically reported to the DUA that she left work to retire and relocate.

53. On November 5, 2020, the claimant was questioned by an investigator hired by the employer about OIC A's behavior at the workplace. The claimant told the investigator that she would not have quit work if the employer removed the Letter of Counseling from her personnel file.
54. On January 16, 2021, the claimant electronically reported to the DUA that she left work to retire and relocate.
55. On January 20, 2021, the Department of Unemployment Assistance issued the employer a Notice of Approval of the claimant's eligibility for unemployment benefits under Section 25(e)(1) of the Law beginning August 30, 2020.
56. The employer filed an appeal on the Notice of Approval.
57. The claimant and the employer's Human Resources Director were the only two participants in the telephone hearing on March 9, 2021. In the hearing, the claimant testified that she retired from work to relocate to California for non-compelling personal reasons.
58. On March 12, 2021, a hearings decision was issued, which overturned the Notice of Approval issued January 20, 2021.
59. On a claimant affidavit dated April 8, 2021, and submitted to the Board of Review on appeal, it states, "But for this harassment I would not have retired from my career."

Credibility Assessment:

The claimant provided inconsistent statements/testimony regarding details of her separation from employment.

When the claimant quit work, the reason she gave to the employer for leaving work was to relocate to California, which is the same reason for leaving work that she provided to the DUA in her questionnaire that requested details of her separation and again when she participated in the initial hearing. It wasn't until the claimant's Notice of Approval was overturned and she was denied unemployment benefits that she contended that she didn't quit work to relocate, but rather that she quit work due to harassment, which was contained in a claimant's affidavit submitted to the [Board of Review] by the claimant's attorney appealing the Hearings Decision. The claimant contended that she didn't report to the DUA prior to this time that she quit work due to harassment because she feared retaliation by the employer. However, prior to the claimant filing for unemployment, she participated in an interview with an investigator on behalf of the department about OIC A, wherein, she reported she objected to his abruptness and frustration, but said she wouldn't have quit work if the employer had removed the Letter of Counseling from her personnel file. It is not disputed that the claimant made a complaint to the Captain about OIC A's disposition with her when she reported a domestic violence call to him. Because

the claimant discussed her dissatisfaction with OIC A's behavior prior to her leaving work and prior to her initial DUA hearing, it's not logical that the claimant would have a fear of retaliation from the employer for providing the same information to the DUA.

The claimant provided inconsistent statements/testimony regarding to whom she reported restraining order violations.

At the first remand hearing, the claimant testified that from the start of her employment until the end of May or beginning of June, 2020, the process for her to report domestic violence calls that may require intervention by a patrol officer was to notify the Lieutenant in charge of the Bureau of Criminal Investigations. If the Lieutenant was not available, the claimant was to report the call to either the Captain, another Lieutenant or a Sergeant.

At the second remand hearing, the claimant testified that prior to May 14, 2020, she reported potential restraining order violations/domestic violence calls to either her immediate supervisor, the Officer in Charge (OIC) on duty, a detective in the bureau or a patrol officer. She further testified that she did not report the violation to her supervisor prior to reporting it to one of the other individuals.

However, prior to either of the remand hearings, the claimant purported she was only required to report the restraining order violation to her immediate supervisor. The claimant also sent the Captain an email on May 18, 2020, stating that she had followed proper protocol on May 14, 2020, by reporting the domestic violence call to her immediate supervisor and further argued that in a meeting with the Lieutenant and the Captain on May 22, 2020.

In addition to the inconsistency in who the claimant reported a restraining order violation to, there is also inconsistency on the claimant's behalf of when she reported the restraining order violation to her immediate supervisor on May 14, 2020.

In an email to the Captain on May 18, 2020, which was in response to his request for a timeline and reason for delay in reporting the violation on May 14, 2020, the claimant denied that there was a delay in reporting the violation as she had done so on the "afternoon" of May 14, 2020. It wasn't until the second remand hearing that the claimant alleged to have contacted her immediate supervisor via telephone on the morning of May 14, 2020, to report the violation prior to reporting it to him in person on the afternoon of May 14, 2020. However, the Letter of Counseling addresses that there was no phone contact by the claimant to the Lieutenant on May 14, 2020. The claimant's new version of the time she first reported the violation is not credible. It's more likely than not that the claimant's first report of the May 14, 2020, restraining order violation was made in the afternoon in person to the Lieutenant as was her initial statement to the employer.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we affirm the review examiner's legal conclusion that the claimant's separation from employment was disqualifying, however, we do so for reasons other than those discussed in the original decision.

Because the claimant resigned from her employment, her qualification for benefits is governed by G.L. c. 151A, § 25(e), 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.

These provisions expressly place the burden of proof upon the claimant.

During the original hearing held on March 9, 2021, the claimant testified that she resigned from her employment in order to relocate to another state. We denied her appeal, where she put forth, for the first time during the proceedings, that she left her employment due to her concerns with her work environment, including harassment from the employer. After the District Court order to take additional evidence, the review examiner conducted two remand hearings. Based upon her review of the testimony during the three hearings and the documentary evidence in the record, the review examiner issued her consolidated findings of fact and a credibility assessment in which she discussed the claimant's inconsistent statements and testimony throughout the proceedings. We believe that this credibility determination is reasonable in relation to the evidence presented and we will not disturb it. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

Because there is no indication in the record that the claimant left employment due to urgent, compelling and necessitous reasons, the remaining question is whether she left work for good cause attributable to the employer. After remand, the review examiner found that the claimant resigned from her employment because she objected to a letter of counseling issued to her, there was a change to the manner in which she was to report domestic violence and sexual assault incidents, and she objected to the manner in which one of the employer's officers in charge treated her when she reported incidents to him. *See Consolidated Finding # 48*. In order to determine whether one or more of these reasons constitutes good cause for leaving work, we will analyze each reason separately.

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). 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. *See* Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 284 (1985) (claimant need not show that she had no choice but to resign, merely that she had an objectively reasonable belief).

The review examiner found that the claimant was issued a letter of counseling on May 25, 2020, because she did not immediately report a restraining order violation. *See* Consolidated Finding # 29. The review examiner further found that the claimant learned of the violation from a victim on May 14, 2020, at 9:13 a.m., and she did not report it to her supervisor or anyone else in charge of receiving the reports until approximately 2:30 p.m. *See* Consolidated Findings ## 12–17. Based on these findings, and because there is no indication in the record that anything outside of the claimant's control prevented her from timely carrying out her duty of reporting a restraining order violation, we believe that the letter of counseling issued to the claimant was reasonable and that the claimant's objection to it does not amount to a reasonable workplace complaint.

Similarly, the change to the manner in which the claimant was to report domestic violence and sexual assault incidents to the employer does not constitute a reasonable workplace complaint. The review examiner found that, on May 18, 2020, in response to the claimant's delay in reporting the restraining order violation on May 14th, the employer instructed the claimant to report any violation to the officer in charge on duty going forward. *See* Consolidated Finding # 24. The claimant objected to this change but did not establish that this modification to the way in which she reported incidents was detrimental to her in some manner or put her position at risk. It thus appears that the claimant was merely generally dissatisfied with the change, which does not provide good cause to leave her employment. *See* Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979).

The final reason for leaving put forth by the claimant was the manner in which one of the employer's officers in charge treated her when she reported incidents to him. The review examiner found that, when the claimant reported a call to this particular officer in charge, he would ask the claimant questions, such as, "what are you doing in my office," "why did you have to bring this to me now," "why can't this wait," and "why don't you go ask your boss." Consolidated Finding # 41. This finding establishes that the claimant had a reasonable workplace complaint, as it would be incredibly difficult for anyone to regularly work with someone who consistently behaved in such a rude manner and to carry out a part of her duties. However, we cannot conclude that this circumstance constituted good cause to quit, unless she also establishes that she made a reasonable attempt to correct the situation or that such an attempt would have been futile. *See* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984).

The review examiner found that the claimant complained to her supervisor that this particular officer in charge was difficult to work with, as he was short, direct, and matter of fact in his responses to her. However, the review examiner further found that the claimant did not make a formal complaint about the officer in charge to the employer's human resources office. *See* Consolidated Findings ## 27 and 45. Because the claimant never revealed to the employer the specific nature of the officer in charge's objectionable behavior toward her, she did not give the

employer an opportunity to address the situation. She further failed to show that doing so would have been futile. Consequently, because the claimant did not take reasonable steps to preserve her employment prior to resigning.

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

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending September 5, 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 - December 27, 2022



Paul T. Fitzgerald, Esq.
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 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.

SVL/rh