Claimant, who resigned through a voluntary separation program, did not demonstrate a reasonable belief of imminent layoff. Though her long tenure with the employer, high rate of pay and vacation accrual, training of another employee to perform her job duties, coupled with her employer's wish to reduce costs could give rise to a concern, she did not ask Human Resources about the likelihood of layoff, even though this is where the employer directed all questions. Also, nothing indicates that the employer hindered her ability to assess the likelihood that she would be laid off. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

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Issue ID: 0058 3549 01

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 resigned from her position with the employer on November 6, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 2, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on June 25, 2021. 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, she 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 obtain additional evidence about the circumstances surrounding the claimant's decision to accept a voluntary separation package. Both parties attended the remand hearing, which took place over two sessions. Thereafter, the review examiner issued his 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 was ineligible for benefits because she had failed to make a substantial inquiry of the employer about the status of her warehouse job if she did not accept the voluntary separation package, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time for the employer, a tool distributor, as an associate-branch warehouse, a non-union position, at its [Town A], Massachusetts location, beginning September 4, 1995. The claimant was paid about $20.00 per hour.

2. In August 2019, the employer offered a Voluntary Severance Plan (VSP). The VSP was offered only to employees working in the employer's five (5) Customer Fulfillment Centers (CFC). The claimant's location was not impacted by the 2019 VSP. The 2019 VSP was offered to improve the employer's cost structure. No particular positions were targeted for reduction or elimination. Employees with 15 years' service were offered the 2019 VSP due to higher salaries and paid time off which, if accepted, would result in greater cost savings to the employer.

3. On August 5, 2020, at 11:00 a.m., the Vice President, Human Resources & Chief People Officer (VPHRCPO) sent all employees an email concerning a Voluntary Severance Plan (VSP), which email stated, in part:

   Team,
   One of the ways we are looking to improve [Employer]'s overall performance and competitiveness as a company is to improve our cost structure, and associate compensation represents one of our biggest expenses. Last year, we offered a voluntary program for associates in the Customer Fulfillment Centers (CFCs) who would like to transition out of the company and the response exceeded our expectations.

   Given the success of the program, we are offering a similar opportunity for some U.S. associates with 15 or more years of service by December 31, 2020, to participate. This program is being extended to associates in most of the CFCs and some other functional areas, but excludes key customer-facing or support areas, such as Field Sales, Metalworking, Solutions, the [City A], Nevada CFC[,] and several others. Eligible associates will receive a lump sum severance payment, less applicable withholdings[,] and any other mandatory deductions, based on years of service as follows:

   ● One week of salary per year of service for years 1 to 10;
   ● Two weeks of salary per year of service for years 11 to 20;
   ● Three weeks of salary per year of service for years 21 and greater.

   The maximum payment under this voluntary program is 52 weeks of pay. The program also includes a one-time benefits subsidy, outplacement services and full vesting for associates who have equity. The program will open on Friday, August 7, and close on Wednesday, August 12, meaning completed applications must be submitted during this period.

I want to emphasize that this program is completely voluntary and you will not be encouraged or told to participate. If you have an interest in learning more, please review the attached document or speak with your Human Resources representative. Expressing interest does not mean you are obligated to participate. [VPHRCPO]

4. The employer did not contemplate reducing or eliminating particular job titles or positions.

5. The VSP excluded nationwide key customer-facing or support areas, such as Field Sales, Metalworking, Solutions, the [City A], Nevada CFC[,] and several other employees who worked field sales positions.

6. The employer offered the VSP to improve its cost structure.

7. The claimant received the VSP offer.

8. The claimant, having 25 years of service with the employer, was eligible for the VSP.

9. The claimant was the senior of two employees in the warehouse who qualified for the VSP.

10. Three other employees who worked in the department had not been employed for the requisite 15 years and were not eligible for the VSP.

11. The claimant was given the period of August 7, 2020, through August 12, 2020, to accept the VSP.

12. The VSP offered the claimant a severance payment of $37,352.00 and a $2,942.25 Benefit Credit.

13. The claimant did not learn of possible layoffs prior to accepting the VSP offer.

14. When the claimant received the VSP offer, she spoke with coworkers and her manager (Manager A) about what it meant and what could be expected. Manager A didn't know what the offer of the VSP meant or what could be expected. Manager A told the claimant she did not know anything about the claimant's employment status, only that she (Manager A) had accepted a voluntary separation package from her last employer.

15. After the claimant received the VSP offer, she believed she would lose her job because she earned the most; had the most paid time off, 5 weeks' paid vacation a year; and she was training another employee to perform the same job duties she performed. The claimant asked Manager A why she was training another employee in how to perform her job duties. Manager A told the claimant the

employer wanted other employees to be trained to perform job duties other than their own.

16. The VSP offer emailed to the claimant on August 5, 2020 by the VPHRCPO stated, in part: "I want to emphasize that this program is completely voluntary and you will not be encouraged or told to participate. If you have an interest in learning more, please review the attached document or speak with your Human Resources representative. Expressing interest does not mean you are obligated to participate."

17. The claimant notified the employer she had accepted the VSP.

18. The claimant did not speak to a Human Resources representative prior to submission of her acceptance of the VSP.

19. The claimant accepted the VSP because she believed she would be let go due to cost savings to the employer if she did not accept the voluntary severance package because: (1) she believed she was training a "temp" to be her replacement for lesser pay; and (2) because she was eligible for 5 weeks paid vacation.

20. The claimant was getting married on August 22, 2020, was busy, and "had a lot going on" with wedding planning. The claimant felt she was rushed to make a decision because she had only 4 days to decide.

21. On August 21, 2020, the Senior Manager Human Resources Business Partner (SMHRBP) emailed the claimant notification her VSP application had been accepted and her last day would be November 6, 2020.

22. On September 3, 2020, after the claimant had submitted her acceptance of the VSP, the claimant spoke with the SMHRBP. The claimant did not have an adversarial relationship with the SMHRBP, did not have any issues with the SMHRBP, and considered her "personable."

23. The claimant did not ask the SMHRBP anything about the VSP or losing her job if she did not accept the VSP.

24. On November 6, 2020, the claimant signed a Severance Agreement and General Release, together with the [Employer] Voluntary Severance Plan ("Plan"), which set forth an employment end date of November 6, 2020, and further stated, in part: "Please contact your HRBP if you have any questions about this agreement or the plan."

25. The claimant did not speak with Human Resources prior to accepting the VSP about whether her job was in jeopardy if she did not accept the VSP as suggested in the August 5, 2020 VSP offer or speak with Human Resources with any questions about the Severance Agreement and General Release or VSP

as suggested in the Severance Agreement and General Release because she did not have "good interactions" with Human Resources and she did not trust Human Resources to give her an honest answer.

26. The claimant did not feel Human Resources would give her an honest answer because at an unknown date prior to 2018[,] the employer consolidated two buildings and the District Manager stated the receptionist position would not be eliminated. One month later[,] the receptionist position was eliminated.

27. The claimant also did not believe she could go to Human Resources because they were located out of state and had "no idea about my building."

28. On November 6, 2020, the claimant separated from the employer.

29. Work was available for the claimant at the time of separation.

30. Or about January 19, 2021, the SMHRBP was informed the employer would be restructuring and those who lost their positions could apply for open positions. Seventy (70) of seventy-eight (78) branch warehouses were being eliminated. The claimant's work location, [Town A], Massachusetts, was not one of the branch warehouses being eliminated and was not involved in the restructuring, reduction in force, or layoffs. The SMHRBP was required to sign a confidentiality agreement concerning the restructuring.

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. Further, as discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

In this case, the claimant elected to participate in the employer's Voluntary Separation Program (VSP). The employer did not mandate that the claimant take the VSP. She chose to do so. *See* Consolidated Findings ## 3 and 17. Because the claimant's action of choosing the VSP triggered her separation, the claimant's separation is analyzed 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 . . . .

By its terms, this section of law places the burden upon the claimant to show that she is eligible for unemployment benefits.

Generally, there are two types of situations in which a claimant can be eligible for benefits in cases where she accepts a compensation package in exchange for ending her employment. The first is characterized as an involuntary departure. It is deemed to be involuntary if the claimant can show that she had a reasonable belief that she would soon be terminated if she did not accept the employer's separation package. *See* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597–598 (1981). In the second circumstance, the separation is deemed to be voluntary but with good cause attributable to the employer. The claimant must show a reasonable belief that she would be terminated and that the employer "substantially hindered the ability of the [employee] to make a realistic assessment of the likelihood that she would be involuntarily separated" if she did not accept the employer's offer. *See* State Street Bank and Trust Co. v. Deputy Dir. of Department of Employment and Training, 66 Mass. App. Ct. 1, 11 (2006).

Reading the holdings of these cases together, the Board has held that, to determine whether a claimant is eligible for benefits, the claimant first must show that she has a reasonable basis for believing that layoffs are a possibility if she does not take the separation package. Then, the claimant has to show that she either had a reasonable belief that she, specifically, was in danger of imminent separation if she did not take the separation package, as in White, or that the employer had hindered her ability to ascertain whether she, specifically, would be laid off if she did not take the package, as in State Street. *See* Board of Review Decision 0018 6461 03 (Jan. 31, 2017).

After remand, we conclude that the claimant has not met her first burden. She did not present a reasonable basis for believing that layoffs were a possibility if she did not take the separation package.

Consolidated Findings ## 15 and 19 provide that the claimant believed she would be released from her job if she did not participate in the VSP. We consider that the claimant held significant seniority among the warehouse associates, and that she received a higher compensation package than other employees. *See* Consolidated Findings ## 9 and 15. She believed the VSP was intended to reduce the number of such higher-paid employees. *See* Consolidated Findings ## 3 and 6. This makes sense. But, at the same time, the employer did not have a mandatory retirement age for employees, and there is nothing in the record to suggest that it ever told the claimant that she would be laid off if she did not take the VSP. *See* Consolidated Finding ## 3, 16, and 22. Consolidated Finding # 13 establishes that the claimant did not learn of possible layoffs prior to accepting the VSP offer. It is true that, in August 2019, the employer offered a similar VSP for its five CFCs. *See* Consolidated Finding # 2. However, no particular positions were targeted for reduction or elimination, and there is no indication from the record that any layoffs or reductions-in-force subsequently occurred. *See* Consolidated Findings ## 2 and 3.

The claimant offered several reasons for her belief that layoffs were likely — the length of her tenure with the employer, her rate of pay and vacation accrual, and her training of another employee to perform her job duties. *See* Consolidated Findings ## 15 and 19. However, these reasons, by themselves, are insufficient to establish a reasonable belief that involuntary layoffs were likely. Even if the VSP was reasonably linked to likely layoffs, the claimant did not demonstrate a reasonable belief that *her* job was in jeopardy if she failed to accept the VSP. The

factors cited by the claimant might give rise to a generalized, speculative concern, but they do not supply a reasonable basis for the claimant to believe that her job was actually in jeopardy. In light of this, we conclude that the claimant has not carried her burden to demonstrate that she quit involuntarily under White.

We also note that, in this case, there is no indication that the employer hindered the claimant's ability to assess the likelihood that she would be involuntarily separated if she did not accept the employer's offer. By email dated August 5, 2020, the employer's initial announcement explained that it offered the VSP as a way to improve its cost structure, emphasized that the program was "completely voluntary," and instructed employees to speak with their Human Resources representatives for additional information. *See* Consolidated Findings ## 3 and 16. Yet, the claimant did not speak with her Human Resources representative prior to accepting the VSP offer to ask whether her job would be in jeopardy if she did not accept the VSP. *See* Consolidated Findings ## 18, 22–24. Under these circumstances, the claimant has not shown that the employer hindered the claimant's ability to ascertain whether she would be laid off if she did not take the package.

We, therefore, conclude as a matter of law that the claimant failed to demonstrate that she separated from employment involuntarily due to a reasonable fear of an imminent layoff, or that her separation was for good cause attributable to the employer because the employer hindered her ability to assess the likelihood of a layoff. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning November 15, 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 - February 28, 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.

JMO/rh