

Legal secretary left her employment under a voluntary separation package. Because she failed to show a reasonable belief of imminent layoff if she did not accept the package or that her employer hindered her ability to assess whether she might be laid off, Board concludes that she is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**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**

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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 affirm.

The claimant resigned from her position with the employer on December 31, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 22, 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 February 12, 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. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her 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 failed to demonstrate a reasonable belief that her law firm job was in imminent jeopardy 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 as a full-time Legal Secretary for the employer, a law firm, from November 2014 until December 31, 2019. (The claimant worked as a Legal Secretary for another law firm beginning 1986 until November 2014, when that law firm was taken over by the instant employer.)
2. When the claimant worked for the predecessor law firm (a longstanding [City A] law firm which was international), that employer had offered a voluntary separation program. The claimant did not participate in that program. After that program concluded, some employees who had not participated were laid off. At no time was the claimant laid off from work while working for the predecessor law firm.
3. It is unknown how [many] employees were laid off from the predecessor law firm, how many years the laid off employees had worked for the predecessor law firm, or how many of those laid off held the position of Legal Secretary.
4. The predecessor law firm was bought out by the instant employer in November 2014. They maintained the same location at [Street A] in [City A]. There were approximately 200 employees at that location when the firm was purchased. Approximately 70 of those employees held the position of Legal Secretary, not all were hired by the instant employer.
5. When the instant employer took over the firm, they took control of everything. There were more restrictions on staff and attorneys on what they could do. They provided less benefits and there were less recognized holidays.
6. The claimant worked at the employer's [City A] office. During the claimant's last year of employment with the instant employer, there were 53 Legal Secretaries working at the [City A] office.
7. The claimant received a voicemail call in August 2019 to announce that the employer was offering a Voluntary Separation Program (VSP). The program was being offered to all United States Legal Secretaries. There was no indication as to why the program was being offered.
8. After receiving the telephone call, the claimant spoke with her Supervising Attorney. The claimant asked what was going on and if he knew if there would be layoffs after the VSP concluded. The Supervising Attorney indicated that he did not know, he only knew what the staff knew.
9. Thereafter, the employer held two meetings related to the Voluntary Separation Program. Speaking at both meetings were the Director of Administration, the Human Resources Manager, and the Secretarial Supervisor (hereinafter "the Presenters"). The meetings that were held only involved the staff that worked at the employer's [City A] office.

10. The claimant attended both in-person meetings related to the Voluntary Separation Program. The employees in attendance were allowed to ask questions.
11. The first meeting was held on August 5, 2019. The meeting was held in-person. The Presenters at that meeting had no information, as they stated that they too had just heard about the Voluntary Separation Program. They had no information as to why the VSP was being offered by the employer. There were questions asked but there were no answers provided. The Presenters indicated that they would get back to the employees when they had information. The claimant has no recollection of asking questions at that meeting, but all of the questions asked by the employees, the Presenters could not answer.
12. The second meeting was held in or around late August 2019/early September 2019. The meeting was held in person. The employees were informed that because the new attorneys were practicing differently, they were younger and more computer orientated, the employer did not need as many secretaries. It was also explained how the employees would be paid if they participated in the VSP, and what would occur with their accrued vacation time. The Presenters indicated that the employer would be having participants in the VSP separating from work on two dates, November 4, 2019, and December 31, 2019.
13. During the second meeting, the claimant asked the Presenters if she were to participate in the VSP, if she would be able to choose what date to leave and if her prior years of service with the predecessor law firm would be recognized. It was explained that under the VSP, the employer would choose the date the participants would leave, and the employer would recognize their years of service with the predecessor law firm.
14. The employer's main office was out of [City B]. The Managing Partner worked out of the [City B] office, but would occasionally be in the [City A] office. The claimant did not go to the Managing Partner with any questions about the VSP, because the Managing Partner would only deal directly with the Attorneys and did not handle matters related to staff.
15. Under the Voluntary Separation Program, the claimant would receive her regular salary for a one-year period, along with the continuation of her health benefits for 18-months.
16. The claimant was sixty-nine years old at the time the Voluntary Separation Program was offered by the employer. The claimant was at the top of the pay scale with the employer, receiving full benefits, including a 401K plan with the employer matching contributions. The claimant was being paid an annual salary of \$79K.
17. The claimant believed that the program was being offered to reduce the number of higher paid Legal Secretaries to allow the employer to hire new staff at a

lower rate of pay. The claimant was aware that the new hires were coming in with less pay, at an annual salary of around \$35K, and with less benefits. (The claimant understood that the new hires received less paid vacation time, and that the employer was not matching 401K contributions.)

18. The claimant chose to participate in the Voluntary Separation Program, making her election by the deadline date. The claimant was provided with seven days to revoke her participation. The claimant chose not to revoke her participation.
19. The claimant was fearful that she would be released by the employer if she did not participate in the VSP. The claimant based her fear on what had occurred when the prior employer had offered a similar program and layoffs occurred after the program concluded. The claimant also felt that she would be released if she did not participate in the VSP, because she was at the top of the employer pay scale for her position and all of the new hires were being paid significantly less.
20. At no time was the claimant notified by the employer that she would be laid off from work if she failed to participate in the Voluntary Separation Program. The employer did not have any mandatory retirement age that applied to the secretarial staff.
21. After the claimant's election, the employer chose to separate the claimant under the VSP on the earlier date, November 4, 2019.
22. The claimant spoke with the Supervising Attorney, whereupon she offered to stay until the end of December 2019. The claimant felt that she would be needed to stay to handle the end of the year matters, as she worked under the Head of the Corporate Business Transactions. Additionally, the employer had scheduled a mandatory one-week partners retreat at the end of October, resulting in individuals being out of the office in or around that time. The Supervising Attorney agreed that the claimant was needed to remain through the end of the year.
23. The claimant's Supervising Attorney spoke with the employer, informing them that the claimant was needed through to the end of the year. The claimant's separation date was then changed by the employer to December 31, 2019.
24. Approximately 14 Legal Secretaries at the [City A] office elected to participate in the Voluntary Separation Program. (It is unknown if any layoffs occurred following the Voluntary Separation Program.) There were 39 legal secretaries remaining at the [City A] office after the VSP concluded.
25. After electing to participate in the VSP, the claimant trained two new hires before her last day of work. (Those new hires did not hold the title of "Practice Assistants", not Legal Secretaries.)

26. The claimant's last day at work for the employer was December 31, 2019.
27. The claimant filed her claim for unemployment benefits on November 27, 2020.
The effective date of the claim is November 22, 2020.

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 Finding # 18*. 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 (January 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 Finding # 19 provides that the claimant feared 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 legal secretaries, and that she received a higher compensation package than the new hires. See Consolidated Finding # 16. She believed the VSP was intended to reduce the number of such higher paid legal secretaries. See Consolidated Finding # 17. This makes sense. But, at the same time, the employer did not have a mandatory retirement age for secretarial staff, and it never told the claimant that she would be laid off if she did not take the VSP. See Consolidated Finding # 20. It is true that, at some point prior to 2014, the claimant's predecessor employer law firm had offered a VSP, and it laid off a number of legal secretaries who failed to take advantage of the offer. See Consolidated Findings ## 1–3. However, we decline to attribute much weight to this prior experience, because the instant VSP offer was presented by a different employer and there is nothing in the record to indicate that it planned a layoff.

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. Although the employer's initial announcement failed to provide details about why the employer was offering its VSP to the firm's legal secretaries, and, apparently, it provided no further information at the first staff meeting on August 5, 2019, the employer held a second meeting in August or September. See Consolidated Findings ## 7–12. The claimant attended both, and she was allowed to ask questions. See Consolidated Finding # 10. Yet, at this second meeting, even though the employer seemed to have more information to provide in response to questions, the claimant did not ask about any layoffs for those legal secretaries who chose to stay. See Consolidated Findings ## 12–13. Under these circumstances, we would further conclude that the employer did not hinder 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 because 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 December 29, 2019, 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 - August 31, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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