Claimant, who was transferred to a different residential site within three to four miles of his former site – with the same job title, pay rate, and schedule – because he violated the employer's medication policy, failed to establish good cause attributable to the employer for resigning. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0068 4756 16

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 reverse.

The claimant resigned from his position with the employer on May 13, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 7, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on November 13, 2021. We accepted the employer application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was entitled to benefits pursuant to G.L. c. 151A, § 25(e)(1). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 established good cause attributable to the employer for quitting when the employer transferred him to a different facility after he had violated the employer's medication administration policy, 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 a site supervisor for the employer, a behavioral health center, from 4/10/2019 to 5/13/2021.

2. The employer has a medication error policy which states in pertinent part, "(e)mployees may be terminated without following the progressive discipline procedure regarding medication administration errors that include but are not limited to: death of a client, serious illness or medical injury, hospitalization, and falsification of documentation of medication administration or reporting a medication error."

3. The employer's medication error policy stated that it is "designed to assure that all clients receive the correct medication and dose, at the correct time, by the correct route and it is administered to the correct person."

4. The claimant received the policies and procedures of the employer when he was hired.

5. The claimant was trained by the employer on medication administration reporting.

6. The employer has a medication book which documents the medication provided to clients.

7. On or about the middle of April 2021, the claimant had another staff person sign his name to the medication book because the claimant was not present and available to sign the medication book.

8. The claimant was suspended by the employer on or about 4/27/2021 because it determined that he violated the medication error policy when he had another staff person sign his name to the medication book because the claimant was not present and available to sign the medication book himself.

9. On or about 4/28/2021, the claimant's supervisor ([A]) and the employer's division director of community services ([B]) had a conversation with the claimant. [A] and [B] told the claimant that he no longer was working at his usual facility and usual work site. [A] and [B] offered the claimant a position at a different facility and different work site.

10. The employer discontinued the claimant's position in his usual work site and offered the claimant a position in a different facility and different work site as a corrective action based on its determination that the claimant violated the medication error policy.

11. The claimant resigned his position with the employer in lieu of the corrective action of the employer moving the claimant to a different work site and a different facility. The claimant was not allowed to remain in his job as site supervisor at the site that he had been working at.

12. The claimant had no plans to quit his job with the employer before he was given the directive that he was being moved to the job at the other facility.

13. The claimant left his job with the employer because he was no longer allowed to work for the employer at the site and facility he had been working at.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the claimant voluntarily left his employment, his eligibility for benefits is properly 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. . . .

The express language in this statutory provision assigns the burden of proof to the claimant. In this case, we conclude the claimant has not met his burden.

The review examiner concluded that because the employer assigned the claimant to a different facility, the claimant had good cause attributable to the employer to resign. The question before us is whether the claimant has shown that this new location made the work unsuitable. "Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of 'good cause.' *See* Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 n. 3 (1981)." Baker v. Dir. of Division of Unemployment Assistance, No. 12-P-1141, 2013 WL 3329009 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*. To determine if the claimant has carried his burden to show good cause under these circumstances, we must first address whether he had a reasonable workplace complaint. *See* Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 284 (1985).

Our review first considers the circumstances that prompted the employer to reassign the claimant to a different facility. The employer maintains a medication policy that prohibits falsification of documents regarding the administration of medications to residents. Employees who violate this policy may be subject to discharge without following progressive discipline steps. Finding of Fact # 2. The claimant received the policies and was trained by the employer on administering medications. Findings of Fact ## 4–5. We note that, in his capacity as a site supervisor (Finding of Fact # 1), the claimant was also responsible for enforcing the employer's policies, including this one.

The review examiner found that, in approximately mid-April of 2021, the claimant directed a subordinate to sign the claimant's name to the employer's medication log because the claimant

was not present and available to sign the medication book himself. Finding of Fact # 7. *See also* Exhibit 3. The employer suspended the claimant on or about April 27, 2021, for violating the medication administration policy by instructing another employee to sign his name in the medication log because he was not present to sign the medication log himself. Finding of Fact # 8.

Rather than discharge the claimant for violating the medication administration policy — which the policy expressly contemplates — the employer re-assigned him to a different site. The new site was "three to four miles" from the claimant's former site, and the claimant would work the same schedule, retain his title as site supervisor, and earn the same salary.[1] Rather than continue to work in the same position with the same salary and schedule at the new site, the claimant quit because the employer would no longer permit him to remain employed at the site where he had been working.

The review examiner's findings do not support a conclusion that the claimant established a reasonable workplace complaint. The employer did not alter the claimant's position, salary, or schedule. The claimant admitted these would have remained the same. The employer also did not unilaterally reassign the claimant to a different site. It transferred him after it found that he had violated the employer's medication policy — as established by the text message in evidence where the claimant directed his subordinate to sign his name, even though he was not present to witness the medication being administered. *See* Exhibit 3.[2]

Even if the claimant objected to having to travel to a site that was "three or four" miles from his prior site, he did not claim that the inconvenience of the commute was a factor in his decision to quit, or that his new commute would have been detrimental to his health or safety, or that it would be unaffordable. *See* Board of Review Decision 0053 8453 04 (May 21, 2021), *citing* Pacific Mills v. Dir. of Division of Employment Security, 322 Mass. 345, 349–350 (1948) (in determining the suitability of a job, many factors are to be considered, including whether the employment was detrimental to the health and safety of the employee). Therefore, we do not believe that the claimant presented sufficient evidence of a reasonable workplace complaint.

Finally, even if the claimant had established a legitimate workplace complaint, he must make reasonable attempts to preserve his job prior to resigning or show that such efforts would have been futile. *See* Kowalski v. Dir. of Division of Employment Security, 391 Mass. 1005, 1006 (1984) (rescript opinion). Here, the claimant made no effort to preserve his employment prior to resignation. He quit without even reporting to work at the new site. While he claimed during the hearing that he viewed the new site as being "notorious," and a site to which the employer

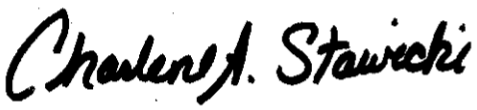
[1]The employer's division director testified that the claimant's job title, salary, and work schedule would not have changed at the new site and added that the site was only "three or four miles" from his former site. The claimant admitted that the employer told him these terms of employment would not have changed, other than the site to which he would report. The terms and conditions of the claimant's position at the new site, while not explicitly incorporated into the review examiner's findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referenced 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).

[2] Exhibit 3 is a text message, dated April 16, 2021, from the claimant to his subordinate. This exhibit is also part of the unchallenged evidence in the record.

banished employees whom it wanted to fail, these vague and unsubstantiated assertions do not establish that trying to preserve his job by accepting the transfer would have been futile.

We conclude as a matter of law that, the claimant failed to establish good cause attributable to the employer for quitting, he did not make reasonable efforts to preserve his employment, and, therefore, he is disqualified pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning May 9, 2021, 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.



BOSTON, MASSACHUSETTS
DATE OF DECISION - April 28, 2022

Charlene A. Stawicki, Esq.
Member

Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

JPCA/rh