

**The claimant was discharged from employment for giving a resignation notice. As this was not misconduct, she was eligible for benefits pursuant to G.L. c. 151A § 25(e)(2). However, starting from the date of her planned resignation, the claimant was ineligible for benefits under G.L. c. 151A § 25(e)(1), because she failed to show good cause attributable to the employer or urgent, compelling, and necessitous reasons for resigning.**

**Board of Review  
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**Issue ID: 0073 2795 28**

### 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 we affirm in part and reverse in part.

The claimant separated from her position with the employer on October 5, 2021. She filed a claim for unemployment benefits with the DUA, effective October 3, 2021, which was denied in a determination issued on November 8, 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 January 6, 2023. 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, was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded, in part, that the claimant was not discharged from her position, is supported by substantial and credible evidence and is free from error of law, where the record establishes that the employer discharged the claimant immediately after she gave her resignation notice and did not allow her to continue working during her notice period.

### Findings of Fact

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

1. The claimant worked as a Vice President of Retail Services for the employer, a financial institute [sic], from April 20, 2021, until becoming separated from employment on October 5, 2021.

2. The claimant's husband had brain surgery prior to her starting employment with the employer.
3. The claimant received an employee handbook when hired. The employer had a leave of absence policy. There was a process within the employer handbook to report incidents of harassment.
4. In her position as Vice President of Retail Sales, the claimant reported directly to the Chief Operations Officer (hereinafter "COO"). The claimant was reporting to her during the entire course of her employment.
5. The claimant worked at the employer's main office in South Boston.
6. The employer had undergone an audit at the time the claimant was hired. As a result of that audit, the employer had to change the way they opened accounts. The claimant was notified of the change when she was onboarded. The next day, the claimant presented a different solution. The COO explained that her solution did not resolve all of the issues involved. The COO did not discuss the claimant being in a probationary period.
7. The claimant notified the COO of concerns related to her office temperature and cleanliness. The claimant did not notify the employer that she suffered with [sic] asthma or that she had an asthma attack at work. The claimant was informed that she needed to maintain the cleanliness of the office and it was scheduled for a deep clean in spring.
8. The claimant spoke to the Vice President of Human Resources regarding her office. Thereafter, the COO informed the claimant that she would look at the contract and talk to the cleaning staff to do better job vacuuming and cleaning. The claimant was eventually moved to a different office.
9. When the COO was speaking with the Vice President of Lending/Deposit Operations, the claimant interjected about ways to handle the loan applications. Her suggestion on handling the loan applications was not within the parameters of the employer policies.
10. The claimant met with the Vice President of Operations to review an upcoming meeting, where the claimant discussed the strategic planning goals. The Vice President of Operations was not on the management team. The Vice President of Operations came to the employer concerned about being unprepared for the meeting. (The Vice President of Operations was not invited to that meeting and was not privy to that information.)
11. The claimant had brought in 1 million dollars in new products and business for the employer. After brining [sic] in the business, the claimant was trying to be more involved in the underwriting of the loans that she had brought in. The

claimant was seeking to have the employer extend the amount(s) of the loans or change fees.

12. In May 2021[,] the COO had a discussion with the claimant about the loan applications she had brought in. The claimant was informed that the employer had other staff to handle the loans once the loan offer was made. The claimant was informed that could not speak with individuals about the loan even if she knew the people.
13. The claimant completed a fire drill project for the employer in late June 2021. There was a discussion about the claimant's successful completion of the project. At no time did the COO inform the claimant that she should quit her job and get a job in that field.
14. In June/July 2021, the COO had a discussion with the claimant about being behind in completing the reviews and setting a goal to catch up on them. The claimant was not disciplined for failing to complete her portion of the review(s) in a timely fashion.
15. The COO would sometimes discuss personal matters with the staff. The claimant also shared some personal information with the COO. At no time did the claimant express to the COO that she was uncomfortable with any of the personal items being discussed.
16. The COO had regular one-on-one meetings with the staff, which included the claimant.
17. During her employment, the claimant spoke to the Vice President of Human Resources approximately three times regarding issues related to her employment. The claimant addressed that she was not understanding what the COO was asking of her and they did not seem to be on the same page. The claimant also discussed the lengthiness of the COO's meetings. The claimant informed the Vice President of Human Resources that the COO would make generalizations during the meetings. The Vice President of Human Resources instructed the claimant to speak with the COO and inform her that she needed to shorten the meetings and when the COO was making generalizations or it was unclear, she needed to ask the COO for specific examples. The claimant did not raise any other concerns with the Vice President of Human Resources.
18. When speaking with the Vice President of Human Resources, at no time did the claimant state that the COO was using profanity, raising her voice to her, or singling her out. At no time did the claimant state that she felt it was a hostile work environment. The claimant did not inform the employer of any medical issues. The claimant did not raise any concerns about the COO having discussions of a personal nature. At no time did the claimant inform [sic] the Vice President of Human Resources that she felt she could not work with the COO.

19. At no time did the COO call the claimant “toxic”, “stupid”, “immature”, direct profanity at the claimant and/or tell her to “shut up.”
20. In September 2021, the claimant went to her doctor for a physical examination. She told the doctor she was in a high stress job. The claimant’s doctor did not provide her with any diagnosis or make any recommendation regarding her employment.
21. On September 29, 2021, the claimant was issued a performance review. Although the claimant did not have all of the necessary management experience when hired for the position, the COO was satisfied with the claimant’s performance in the position. The claimant met the expectations within that review. (In addition to the COO, the Chief Executive Officer had reviewed, approved, and made comments within the claimant’s performance review.)
22. On September 29, 2021, when being issued her performance review, the claimant was dissatisfied with the comments made within the review and felt it was inaccurate. The claimant signed the review on September 29<sup>th</sup>[,] writing a comment indicating her disagreement. After receiving the review, the claimant decided to resign her position with the employer.
23. The claimant did not request a leave of absence or transfer prior to resigning her position.
24. On October 4, 2021, the claimant submitted her email resignation to the COO indicating “One-on-One meeting conversations and the recent performance review has/is causing much stress and starting to impact my health Despite my best efforts, I am not able to continue with this degree of elevated anxiety any longer. As such, I must tender my resignation My last day with (employer name) will be Friday, October 29, 2021.”
25. The claimant’s last day at work for the employer was October 4, 2021. Due to the nature of the claimant’s position, the employer chose not to have the claimant work out the notice period.
26. The claimant filed her claim for unemployment benefits on October 6, 2021. The effective date of the claim is October 3, 2021.

### 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 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. We further believe that the review examiner’s credibility assessment, which is contained in the review examiner’s conclusion and reasoning discussion, is

reasonable in relation to the evidence presented. However, while we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant did not establish good cause or urgent, compelling, and necessitous reasons for leaving her position, we also believe that the claimant was eligible for benefits, but only during the pendency of her notice period.

The findings indicate that the claimant gave her resignation notice on October 4, 2021, and offered October 29, 2021, as her last day of work. *See* Finding of Fact # 24. The findings also show that the claimant's last day of work was October 4, 2021, the date on which she gave notice, and that the employer chose not to have the claimant work out her notice period. *See* Finding of Fact # 25.

For this reason, we analyze the claimant's eligibility for benefits pursuant to G.L. c. 151A, § 25(e)(2), as of the week beginning October 3, 2021. However, the record shows that she planned to resign from the employer on October 29, 2021. Thus, we analyze the claimant's eligibility for benefits pursuant to G.L. c. 151A, § 25(e)(1), as of the week beginning October 31, 2021, which is the week the claimant's resignation would have taken effect had she been allowed to work out her notice period. *See* Board of Review Decision 0002 4012 73 (June 20, 2014).

First, we address the claimant's involuntary separation from employment on October 4, 2021. The relevant statute, G.L. c. 151A, § 25(e)(2), provides, in relevant 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in willful 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] grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee's right to benefits, and the burdens of production and persuasion rest with the employer.” *Still v. Comm'r of Department of Employment and Training*, 423 Mass. 805, 809 (1996) (citations omitted).

As a threshold matter, the employer must show that the claimant's termination was attributable to some sort of misconduct or rule violation. Here, there is no evidence that the claimant did anything wrong. The claimant notified her supervisor on October 4, 2021, that she was quitting, effective October 29, 2021. Finding of Fact # 24. Due to the nature of the claimant's position with the employer, it chose to end the claimant's employment because she gave her resignation notice. *See* Finding of Fact # 25. Submitting a three-week notice of resignation is not misconduct. There is also nothing in the record to suggest that the claimant violated a rule or policy of the employer. Therefore, the employer has not met its burden under G.L. c. 151A, § 25(e)(2), to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced policy or rule of the employer.

The claimant intended to work for the duration of her three-weeks' notice, and she intended to resign on October 29, 2021. Finding of Fact # 24. Considering these facts, the claimant's

separation from employment as of October 29, 2021, is deemed to be voluntary and her eligibility for benefits at that point is properly analyzed under G.L. c. 151A, § 25(e)(1).

Thus, we next address whether the claimant is eligible for benefits as of when her voluntary resignation would have taken effect pursuant to the following separate provisions under G.L. c. 151A § 25(e), which state in relevant part:

[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 . . .

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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 on the claimant to show that she is eligible to receive unemployment benefits.

Based on the facts before us, we agree with the review examiner's conclusion that the claimant did not establish that she quit for urgent, compelling, and necessitous reasons or good cause reasons attributed to the employer.

The claimant's resignation letter states that she resigned due to stress and anxiety from aspects of her job that were starting to affect her health. *See* Finding of Fact # 24. "[A] 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons under" G.L. c. 151A, § 25(e), "which may render involuntary a claimant's departure from work." Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), *quoting* Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 847 (1992). Medical conditions are recognized as one such reason. *See* Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335-336 (1979)

Finding of Fact # 20 was taken directly from the claimant's testimony and indicates that her doctor did not offer a diagnosis and did not make any recommendations relative to her employment. We also note that the record contains no medical documentation in support of the proposition that the claimant had to separate from employment for health-related reasons.

In order to show 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). In this case, several findings indicate that the review examiner rejected the claimant's testimony regarding various allegations of harassment and verbal and mental abuse at the hands of the COO as not credible. *See* Findings of Fact # 6, 13, 15, and 19. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee

of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). “The test is whether the finding is supported by “substantial evidence.”” Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted). “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” Id. at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted). Based upon the record before us, we conclude that the review examiner’s assessment is reasonable in relation to the record and should not be disturbed on appeal.

Inasmuch as the findings do not reflect any unreasonable behavior on the part of the employer, the claimant has not shown good cause attributable to the employer to resign on October 29, 2021.

We, therefore, conclude as a matter of law that the claimant was eligible for benefits for the three weeks following her discharge by the employer pursuant to G.L. c. 151A § 25(e)(2). We further conclude that the claimant was ineligible for benefits pursuant to G.L. c. 151A § 25(e)(1), as of her planned resignation date.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is eligible for benefits for the week beginning October 3, 2021, through the week beginning October 24, 2021, if otherwise eligible. The claimant is ineligible for benefits for the week beginning October 31, 2021, 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 22, 2023**



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](http://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/th