

**The claimant was promoted into a new job with an increase in pay and successfully performed tasks with more responsibility and skill for seven months. Because the employer fired her new supervisor, she was returned to her old position and nearly all her new job duties taken away. Held this was a demotion and her employment had become unsuitable. Following her resignation, the claimant was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review  
100 Cambridge Street, Suite 400  
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**

**Issue ID: 0074 1331 80**

### 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 failed to establish that she left work with good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1).

The claimant had filed a claim for unemployment benefits, which was denied in a determination issued by the agency on January 13, 2022. The claimant appealed 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 in a decision rendered on April 2, 2022. 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 September 26, 2022, 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 separating from the employer. Only the claimant attended the 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 did not have good cause attributable to the employer to leave her employment, is supported by substantial and credible evidence and is free from error of law, where, after the District Court remand, the review examiner found that the claimant resigned because her job duties were changed.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we reverse 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 was employed full-time as a Program Coordinator II for the employer, a state agency, from August 5, 2005, until November 7, 2021.
2. The claimant worked Monday through Friday from 9:00 a.m. - 5:00 p.m., earning \$38.36 per hour.
3. The claimant's supervisor was the Deputy Assistant Commissioner for the Office of Policy Planning and Children's Services (Deputy Assistant Commissioner).
4. The claimant was employed to work in the Office of Policy Planning and Children's Services (Planning Department).
5. During her employment, the claimant also did volunteer work with the employer's Office of Diversity, Equity, and Inclusion (Diversity Department).
6. In about March, 2020, the claimant had exhausted the employment steps within the Planning Department.
7. In March, 2020, she spoke to the employer's Commissioner and informed her that she was interested in working within the Diversity Department.
8. Due to the COVID-19 pandemic, the claimant began working from home in March, 2020.
9. On April 1, 2021, the claimant was promoted to the Program Coordinator II position in the Diversity Department. Based on the claimant's promotion, her salary increased from \$36.85 to \$38.36.
10. The claimant's immediate supervisor in the Diversity Department was the Director of Diversity (Director).
11. The only employees in the Diversity Department were the Director and the claimant.
12. While working in the Diversity Department, the claimant's duties were all related to supporting the department's initiatives.
13. On April 29, 2021, the Director submitted the required paperwork to the employer's human resources department (HR) regarding the claimant's promotion and required salary increase.

14. In April, 2021, the claimant did not receive the increase in her salary. When she contacted HR, she was told that they had not received the required paperwork in order to approve the increase.
15. Over [the] years, the claimant, who has school-aged children, drove to work because she wanted to have access to her car in case of [an] emergency at her children's school.
16. Prior to June, 2021, when the claimant worked in-person in the office, she did not have to pay for parking based on the location of the office.
17. In June, 2021, the office was relocated because there was a flood in the building.
18. There were [sic] no available street or free parking at the new location. The employees, including the claimant, were required to pay \$25.00 per day for parking.
19. In August, 2021, the claimant began going into the office on Tuesdays and Wednesdays. The claimant had to pay \$25.00 per day for parking.
20. In October, 2021, the claimant received an increase in her salary retroactive to August, 2021. She was not given the retroactive payments for April through July [of] 2021.
21. On October 13, 2021, the employer discharged the Director.
22. On October 14, 2021, the employer's Commissioner told the claimant that her new supervisor would be the Deputy Assistant Commissioner for the Planning Department.
23. The claimant was never told that she was being demoted. She was not demoted in the sense that she was given a lower title or decrease in pay; only her job duties changed.
24. The claimant's hours were not changed as a result of the being sent back to the Planning Department.
25. The claimant's rate of pay was not changed as a result of being sent back to the Planning Department.
26. On October 19, 2021, the Deputy Assistant Commissioner changed all the job duties relating to [the] Diversity Department, which had been previously assigned to the claimant. The claimant was subsequently assigned tasks relating to the Planning Department.
27. The claimant believed that she had been demoted because she was no longer being assigned tasks from the Diversity Department daily.

28. The claimant did not ask anyone in management if her return to working in the Planning Department was temporary or permanent.
29. In October, 2021, the claimant became displeased with the Deputy Assistant Commissioner after she complained to her about the parking fees and the Deputy Assistant Commissioner told her to take the commuter rail to work.
30. On November 2, 2021, the claimant spoke to the employer's Assistant Commissioner, (the Deputy Assistant Commissioner's supervisor), and told her that the Deputy Commissioner had changed all her Diversity Department related job duties. The claimant also told the Assistant Commissioner that the Deputy Assistant Commissioner had told her to take the commuter rail when she spoke to her about the parking fees. The Assistant Commissioner told the claimant that she wished she could do something, but there was nothing she could do.
31. On November 2, 2021, the claimant became displeased with the Assistant Commissioner because she felt unsupported when she spoke to her about the issues she was having with the Deputy Assistant Commissioner.
32. The claimant's last day at work was November 5, 2021.
33. On November 7, 2021, the claimant submitted her written resignation [to the] Commissioner, effective November 7, 2021.
34. On November 7, 2021, the claimant quit her job because she believed that she had been demoted from the Diversity Department, because her job duties (but not pay or hours) changed in October of 2021 from those related to the Diversity Department to those in the Planning Department.
35. The claimant would have stayed at the job had she not believed she was demoted.
36. The claimant continued going into the office between August and November [of] 2021, even though it was expensive but believed there could be a solution to her concerns about her job duties. She would have continued going in if her job duties had not changed from the ones she was doing for the Diversity Department back to the ones she had done for the Planning Department.
37. The claimant would have stayed at the job even though she was not given the retroactive money to April, 2021.

Credibility Assessment:

During the remand hearing, the claimant testified that she would have stayed at the job if not allegedly demoted from the Diversity Department. She testified that even

though working in the office between August and November [of] 2021 was a pinch to her pocket, she would have continued because she thought something could have been worked out with the employer. She also testified that she would have stayed at the job even though she did not receive the retroactive payments. Given this testimony, it is found that she quit her job due to the change in job duties, not due to any pay concerns (including those related to parking or back pay).

### 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. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment except as follows. We set aside the portion of Consolidated Finding of Fact # 26, which states that all of the claimant's job duties relating to the Diversity Department were changed on October 19, 2021, as the record reflects that the employer removed fourteen of her sixteen duties. In adopting the remaining findings, we deem 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant did not have good cause to leave her employment.

As the claimant resigned from employment, her separation 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 terms of this provision assign to the claimant the burden to prove that she had good cause attributable to the employer to resign.

When a claimant contends that his or her 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). In this case, the findings show that the claimant resigned because the employer changed her job duties from those related to the Diversity Department to those in the Planning Department. Consolidated Finding # 34. The question we must decide is whether this change had rendered the claimant's job 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*.

We note at the outset that not every situation where an individual's job duties are changed constitutes good cause to resign within the meaning of the above statutory provision. We will consider the facts and circumstances in each case. Throughout the claimant's 16-year tenure for the employer, she had worked as a Program Coordinator II, but, on April 1, 2021, she was promoted from the Planning Department to the Diversity Department with a raise in pay. *See Consolidated Findings ## 1–4, and 9.* Because of the employer's decision to discharge the Director of Diversity, the claimant was placed back into her former position in the Planning Department. *See Consolidated Findings ## 21 and 22.* Although the employer did not reduce her wages, it did significantly change her job duties.

A careful comparison of the job duties in the two placements shows that the claimant had essentially been promoted into a new job. In her old position at the Planning Department, where the claimant worked as an Administrative Assistant, the claimant performed administrative tasks, such as processing payroll, scheduling, compiling and entering data, running reports, resetting passwords, help with phone coverage, and the like. *See Exhibit 11.* In the Diversity Department, her job duties as Diversity Equity Inclusion Specialist involved a different skill set with more responsibility, such as providing training, evaluating various Diversity programs, developing materials for distribution, editing interview questions, and representing the department on interview committees. *See Exhibit 12.*<sup>1</sup>

Nothing in the record suggests that the employer was dissatisfied with her performance in her new job. It seems that the only reason for moving her back to the Planning Department after seven months was that it had discharged the Diversity Director. Thus, we can reasonably infer that she was both capable of, and competent at, performing these new responsibilities. Nonetheless, with her return to the old position, her supervisor removed fourteen of the sixteen duties she had performed at Diversity Department. The remaining two were performed only on an as-needed basis. All of the daily responsibilities that she had been performing successfully were taken away.<sup>2</sup> Under these circumstances, we agree that this was a demotion, and we believe that her employment had become unsuitable.

The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action also has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93-94 (1984). Here, the claimant spoke to the Assistant Commissioner about the changes but was informed that nothing could be done. This constitutes a reasonable step to preserve her employment. *See Consolidated Finding # 30.*

We, therefore, conclude as a matter of law that, in light of the facts and circumstances presented in this case, the claimant established good cause attributable to the employer to resign within the meaning of G.L. c. 151A, § 25(e)(1).

---

<sup>1</sup> Exhibit 11 is the claimant's job description for the Planning Department as Administrative Assistant II. Exhibit 12 is the claimant's job description in the Diversity Department as Diversity Equity Inclusion Specialist II. While not explicitly incorporated into the review examiner's findings, these exhibits are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to 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).

<sup>2</sup> This portion of the claimant's testimony is also part of the unchallenged evidence in the record.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning November 7, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 8, 2023**



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.

SVL/rh