

The employer laid off the claimant, a classroom monitor, because state regulations restricted the number of staff due to the COVID-19 public health emergency. The employer’s letter to the claimant merely offered her the opportunity to apply for open positions. It did not offer her alternative work. Accordingly, the claimant was entitled to benefits under G.L. c. 151A § 25(e)(2).

**Board of Review
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**Issue ID: 0074 1820 42
0067 3534 41**

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 reverse.

The claimant separated from her position with the employer on March 19, 2021. She reopened an existing claim for unemployment benefits with the DUA on March 28, 2021, which was later denied in separate determinations issued on May 13, 2021 (Issue ID # 0067 3534 41), and January 5, 2022 (Issue ID # 0074 1820 42). The claimant appealed both determinations to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency’s initial determinations and denied benefits in separate decisions rendered on December 29, 2022.¹ We accepted the claimant’s applications for review of both decisions.

Benefits were denied after the review examiner determined that the claimant did not quit her employment for an urgent, compelling, and necessitous reason, nor did she have good cause for leaving attributed to the employer and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record.²

The issue before the Board is whether the review examiner’s decision, which concluded that the claimant voluntarily quit her position, is supported by substantial and credible evidence and is free from error of law, where the employer eliminated her position.

Findings of Fact

¹ Both issues were consolidated into one hearing. Since both cases have the same operative facts and are governed by the same section of law, we can properly address whether the claimant is entitled to benefits in one decision. Issue ID # 0067 3534 41 contains a start date of March 14, 2021, and Issue ID # 0074 1820 42 contains a start date of March 28, 2021.

² The review examiner issued the same findings of fact for Issue ID ## 0074 1820 42 and 0067 3534 41, except Issue ID # 0074 1820 42 contains an additional finding of fact. We assume the omission from Issue ID # 0067 3534 41 was an oversight, and we have used the findings from Issue ID # 0074 1820 42 in our decision here today.

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

1. The claimant worked for the employer as a part-time bus monitor from October 1, 2009 until 2016 at which time she worked as a part-time classroom monitor until her separation on March 19, 2021.
2. The employer is an early education program and provider.
3. In early 2021, the employer received information from the Massachusetts Department of Early Education and Care (EEC) that it would need to restrict the number of staff in each of the classrooms in order to create "pods" or "bubbles" which would reduce the amount of person-to-person contact and decrease the chances of spreading the COVID-19 virus.
4. The reduction in the number of staff in each classroom was a requirement imposed by EEC as a condition for renewal of their license to provide services.
5. On March 5, 2021, the employer sent the claimant a letter informing her of the EEC mandate and that her part-time classroom monitor position would be eliminated as of March 19, 2021. In the letter, the employer offered her the options of applying to 3 [sic] different full-time positions, 1 part-time position, an on-call substitute, or resignation with the potential for recall in the future.
6. On March 16, 2021, the claimant met with her manager to review the options.
7. During the March 16, 2021 meeting, the claimant was told by her manager that if she chose to resign, she could "collect" unemployment insurance benefits.
8. On March 16, 2021, the claimant told her manager that she was choosing to resign.
9. The claimant did not review the employment options with anyone in the human resources department, family, or friends.
10. The claimant was under the care of medical professionals for multiple medical conditions including bipolar disorder, anxiety, panic attacks, high blood pressure and a thyroid disorder for which she took multiple prescription medications.
11. The claimant did not inform the employer of her medical conditions or request any changes or accommodations in her work because of them.
12. The claimant's doctor had advised her to limit her work to 25 hours per week but did not disable her from employment.
13. The claimant did not have any workplace complaints.

14. The employer had continued work available to the claimant.
15. The claimant chose to resign effective March 19, 2021.
16. On March 31, 2021, the claimant submitted a handwritten letter to the employer confirming that she had “voluntarily selected layoff” effective March 19, 2021.
17. The claimant quit on March 19, 2021 because of her voluntary resignation.

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 except as follows. We reject Findings of Fact ## 8, 14, 15, and 17, which are contradicted by Finding of Fact # 5 and the evidence in the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant is ineligible for benefits.

As an initial matter, we must decide which provision of law controls the claimant’s separation from employment. In his decision, the review examiner applied G.L. c. 151A, § 25(e)(1), which is the section of law that applies to resignations. The findings and evidence in the record, however, lead us to conclude that the claimant was discharged from employment. This distinction, between a resignation and a discharge, is a mixed question of law and fact, and the “application of law to fact has long been a matter entrusted to the informed judgment of the board of review.” Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979).

The record shows that the claimant was laid off from her employment on March 19, 2021, when the employer eliminated her position due to the reduction of classroom sizes imposed by the Massachusetts Department of Early Education and Care (EEC). *See* Findings of Fact ## 3 and 5. The employer’s March 5, 2021, letter stated: “as such, as of the end of the day on March 19, 2021, we will no longer be able to have part time staff members in our classrooms.”³ These circumstances indicate that this was a layoff. In this letter, the employer merely offered the claimant the option to apply for open positions. Finding of Fact # 5. Nothing in the record shows that the employer was going to reassign or transfer the claimant to a different position.

Where a claimant is laid off from employment, her separation is treated as a discharge and her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(2), which provides, in pertinent part, as follows:

³ *See* Exhibit 2 in Issue ID # 0074 1820 42, the employer’s March 5, 2021, letter. While not explicitly incorporated into the review examiner’s findings, this exhibit is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

[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 wilful 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

“[T]he 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, to meet its burden under G.L. c. 151A, § 25(e)(2), the employer must show some sort of misconduct or rule violation that caused the separation. Here, there were no actions on the claimant's part to show she engaged in any misconduct or violated any rule or policy. Rather, the employer initiated the separation because it could not offer work due to the EEC regulations as of March 19, 2021. Thus, the claimant was eligible for benefits upon this separation.

We, therefore, conclude as a matter of law that the claimant was discharged from employment. We further conclude that the employer failed to show that her discharge was due to deliberate misconduct in wilful disregard of the employer's interest or due to a knowing violation of a reasonable and uniformly enforced policy within the meaning of G.L. c. 151A § 25(e)(2).

The review examiner's decision is reversed. The claimant is eligible for benefits for the week beginning March 21, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 12, 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

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.

MR/rh