

Shortly after being hired as an office manager, the employer changed the claimant's job responsibilities so that she was primarily responsible for the housekeeping department. Because this change required her to perform certain tasks which were clearly antithetical to that for which she was hired, her resignation was for good cause attributable to the employer. She is eligible 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

Issue ID: 0074 4090 18

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 resigned from her position with the employer on December 3, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 28, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant,¹ the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on April 26, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having 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). 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 that the claimant did not have good cause attributable to the employer to resign because the job duties assigned to her, though different than those for which she was hired, remained suitable, 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 was hired as an office manager for the employer, a medical marijuana dispensary.

¹ The employer received a notice to participate in the hearing as a witness, but it did not attend.

2. The employer assigned the claimant to different duties where she primarily oversaw the housekeeping department.
3. A different quality manager normally oversaw the housekeeping department.
4. The claimant's pay or hours were not impacted, only her day-to-day responsibilities.
5. The claimant was unhappy the employer was not having her work on the responsibilities she was hired for.
6. In June of 2021, the claimant submitted her resignation. The general manager told the claimant they would work to address the claimant's concerns and have her in the position she was hired for. The claimant agreed to return to work.
7. The employer did not change the claimant's job responsibilities.
8. On or around November 19, 2021, the claimant again submitted her resignation, effective December 3, 2021.
9. The claimant would not have resigned if she was assigned the duties and job responsibilities which were discussed at hire.
10. On January 28, 2022, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Disqualification effective November 28, 2021.
11. The claimant appealed the determination.

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 ultimate conclusion is free from error of law. After 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 reject the review examiner's legal conclusion that the claimant did not have good cause attributable to the employer to resign.

Because the claimant quit her job, her eligibility for benefits is governed by 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 express terms, this statutory provision places the burden on the claimant to show that she had good cause attributable to the employer to resign.

In the present case, the claimant started working for the employer in March, 2021, and resigned in early December, because the employer had assigned her different job duties than those for which she had been hired. *See* Findings of Fact ## 1, 2, 5, 8, and 9.² The review examiner concluded that she had failed to show that the assigned work was unsuitable. We disagree.

A job which was suitable at one time may become unsuitable with changing circumstances. Graves v. Dir. of Division of Unemployment Assistance, 384 Mass. 766 (1981). Thus, leaving employment due to a detrimental change by the employer of the conditions of employment constitutes leaving for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). *Id.* at 768 n. 3; 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*.

In rendering his decision, the review examiner reasoned that the change from being the office manager to primarily overseeing the housekeeping department did not render the job unsuitable, because both were managerial positions and the claimant's pay and hours remained the same. *See* Findings of Fact ## 2 and 4. This summary characterization of the claimant's changed job duties fails to capture the detailed distinctions that the claimant offered in her testimony. The claimant read into the record the job description of the office manager position for which she was hired, which included nearly 30 tasks and responsibilities, and then she described what she was expected to do once assigned to oversee the housekeeping department. As she explained, the latter consumed about 75% of her time, it included tasks that she had not been trained for, and she had to physically clean the office, "toilets and all."³

The Supreme Judicial Court has stated that if a worker resigns because she was required to perform work that was "clearly antithetical to that for which she was initially employed," she may be eligible for benefits, provided she made a reasonable attempt to correct the situation or shows that such an attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93 (1984) (citations omitted) (fish packer was required to hold back fish that were falling off the assembly line, which was not one of the duties of a packer). Here, the claimant was hired to perform office manager work, a job that entailed ordering supplies, scheduling meetings and travel, generating reports, and the like, but shortly thereafter, 75% of those duties had changed. To be sure, many tasks could be summarily categorized as managerial, but the employer also had her cleaning bathrooms. We think that the claimant has demonstrated that her employer was requiring her to perform work that was clearly antithetical to that for which she was hired.

Finding of Fact # 6 reflects that the claimant raised her concerns with the general manager, but, despite his promises, her assignment did not change. We note that, during the hearing, the claimant also stated that she went to the human resources department to complain on numerous occasions.⁴

² Although the claimant's start date with the employer was omitted from the findings of fact, it 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).

³ This is also part of the claimant's unchallenged testimony presented during the hearing.

⁴ Again, the claimant's testimony in part of the undisputed record.

We are satisfied that the claimant made a reasonable effort to correct the situation and that further attempts would have been futile.

We, therefore, conclude as a matter of law that, because the claimant's job had become unsuitable, her resignation was for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning November 28, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 25, 2022



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

AB/rh