

The employer excluded the claimant from meetings relating to his work, failed to give him information needed to perform his job, and declined to give him the opportunity to cross-train as had been given to his peers. The claimant's work performance had become a concern to both parties. But, when the claimant raised these concerns with the employer, he was asked to resign. Held the employer's actions caused the claimant to resign, and he met his burden to show that he did so for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(2).

**Board of Review
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Issue ID: 0075 0870 86

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. Benefits were denied on the ground that the claimant failed to show that he resigned from his employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons, and, thus, he was ineligible for benefits 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 May 4, 2022. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits attend only by the claimant,¹ the review examiner affirmed the agency's initial determination in a decision rendered on July 16, 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 January 4, 2023, the District Court ordered the Board to afford the claimant an opportunity to participate in another hearing, either in person or virtually, and to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence, as instructed by the District Court. Both parties 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 resigned from his supervisory position without a reasonable belief that he was about to be discharged and without a workplace complaint that constituted good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law.

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.

¹ The claimant's former employer had been invited to participate in the hearing as a witness only, but it did not appear.

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. In October 2015, the claimant started working full time for the employer. The employer is a healthcare insurance provider.
2. The claimant was initially hired as a Medical Care Manager.
3. The claimant's most recent job title was Supervisor of Clinical Operations. The claimant was promoted to a supervisor in 2016. The claimant worked on the Medicaid part of the team. The employer also had a commercial side of the team.
4. The claimant was usually scheduled to work Monday through Friday from 8 a.m. until 4:30 p.m.
5. The claimant was paid an annual salary of \$112,000.
6. The claimant's supervisor was the Manager of Your Care Circle (hereinafter Manager).
7. The claimant tried his hardest at his job working for the employer.
8. On March 4, 2020, the employer placed the claimant on a Performance Improvement Plan (PIP) until August 20, 2020.
9. On March 4, 2021, the employer issued the claimant a written warning for work performance issues regarding paperwork.
10. The claimant was unhappy with the changes the employer's establishment had made. The employer was crossing over teams. The claimant felt the employer's program was losing its unique direction and creativity. The claimant voiced his opinion to the employer about his disagreement with the employer's practices.
11. The employer began to exclude the claimant from meetings which the claimant previously was involved in in connection with his work tasks. The employer began not to provide the claimant with information that the claimant required to perform his job duties. The claimant was concerned that not having certain information was impacting his overall display of work performance.
12. The employer began to cross train the commercial side of the team with the Medicaid side of the team. The supervisor on the commercial side of the team was cross training on the Medicaid side of the claimant's team. The claimant

was not given the opportunity by the employer cross train on the commercial side of the team.

13. Prior to the claimant separating from work, the employer was not intending on discharging the claimant from work.
14. Prior to separating the claimant from work, the employer was becoming concerned with the claimant's job performance. Prior to the claimant separating from work, the employer did not have any plan of action in place in connection with the claimant's work performance issues.
15. During meetings with the employer, the claimant expressed concerns to the employer about the claimant being left out of meetings, concerns about the commercial side and Medicaid side of the teams cross training, about the claimant not receiving the information the claimant needed to perform his job tasks, and the claimant not being given the opportunity to cross train on the commercial side of the team.
16. The Senior Director of Population & Health (hereinafter Director) is in a position of management at the employer's establishment.
17. On September 16, 2021, the Director initiated a virtual meeting with the claimant. During this meeting, the claimant and the Director discussed work tasks that were being performed with employer's teams and how the claimant felt the work tasks should be performed. During this meeting, the claimant expressed to the Director that the claimant was not getting the information that the claimant needed to perform his work tasks, and that the claimant was offering to assist with work tasks and was not being included with work tasks.
18. During the September 16, 2021, virtual meeting, the Director requested for the claimant to tender a resignation to the employer. During the meeting, the Director did not provide the claimant with any detailed information about why the Director was requesting for the claimant to resign. During this meeting, the Director initiated the mention of the claimant submitting a resignation.
19. During the September 16, 2021, virtual meeting, the claimant and the Director agreed that the claimant could have the weekend to decide if the claimant was going to resign from his job position at the employer's establishment.
20. The week following the September 16, 2021, virtual meeting, the claimant asked the employer for more time to consider if he was going to resign. The employer agreed to grant the claimant more time.
21. On September 24, 2021, the claimant participated in a virtual meeting with the Director and the Manager. During this meeting, both the Director and the Manager asked the claimant to tender his resignation to the employer.

22. After the September 24, 2021, virtual meeting, the claimant e-mailed the following resignation to the employer:

“Thank you [Manager] and [Director] for taking the time to talk with me this morning.

It was not an easy decision but I believe it is the best for me and the team to resign from my position. My resignation will be effective Monday, January 9th, 2022 so my last scheduled work day would be Monday, January 3rd, 2022.

I appreciate your assistance and connections with my job search.

Thank you so much for your support.”

23. The employer suggested that the claimant continue to work for the employer until January 3, 2022. The claimant agreed to work for the employer until January 3, 2022.
24. The claimant decided to resign from his position at the employer’s establishment because he believed that the employer was going to discharge him from work.
25. The claimant was not notified by a member of management that the employer was going to discharge the claimant from work.
26. The claimant believed that the employer was going to discharge the claimant from work as the employer had been crossing/combining teams at the employer’s establishment, not providing the claimant with information the claimant needed to perform his job duties, was cross training the commercial supervisor on the Medicaid part of the team and not giving the claimant the opportunity to train on the commercial part of the team. The claimant felt the employer was forcing the claimant out of his job position.
27. The claimant also believed the employer was going to discharge the claimant from work because on September 16, 2021, during a virtual meeting, the Director requested for the claimant to tender a resignation and on September 24, 2021, during a virtual meeting, both the Director and the Manager requested for the claimant to tender a resignation.
28. The employer’s Director of Human Resources does not support members of management requesting an employee to tender a resignation when work performance concerns are at issue. The employer’s Human Resources Department would recommend counseling sessions and/or a PIP to be entered.
29. The Director of Human Resources was not present during the virtual meetings the claimant attended on September 16, 2021, and September 24, 2021.

30. After the claimant submitted his resignation to the employer, the claimant subsequently asked the employer to rescind his initial resignation on two occasions. The employer did not allow the claimant to rescind his initial resignation as requested. The employer informed the claimant that it was too late for the claimant to rescind the resignation.
31. The claimant's last date of work was on January 3, 2022.
32. The claimant quit his job at the employer's establishment because the claimant believed the employer was going to discharge the claimant from work, and the claimant was unhappy with the changes the employer was making in workplace.
33. The claimant filed an initial unemployment claim effective the week beginning January 2, 2022.
34. On May 4, 2022, the Department of Unemployment Assistance issued a Notice of Disqualification denying the claimant benefits under Section 25(e)(1) of the Law commencing the week beginning January 2, 2022, and until he met the requalification provisions Law. The claimant appealed the Notice of Disqualification.

Creditably Assessment:

During the hearing, the employer's Director of Human Resources contended the Director of Population & Health nor the Manager requested for the claimant to tender a resignation during the virtual meetings that occurred on September 16, 2021 and September 24, 2021. However, the claimant's testimony to the contrary is assigned more weight where the Director of Human Resources was not present for the virtual meetings, the Director of Population & Health nor the Manager participated in hearing, and the claimant's testimony under oath was very specific and detailed that these individuals requested for the claimant to tender a 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 consolidated 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 consolidated findings of fact and deems 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, based upon the record after remand, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits, as discussed below.

The consolidated findings state that the claimant left his job with the employer because he believed he was going to be discharged. *See Consolidated Findings ## 24 and 32.* The Supreme Judicial Court has held that if employees leave employment under the reasonable belief that they are about to be fired, their leaving cannot fairly be regarded as voluntary within the meaning of G.L. c. 151A,

§ 25(e)(1). Malone-Campagna v. Dir. of Division of Employment Security, 391 Mass. 399, 401–402 (1984), *citing* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597–598 (1981). In such a case, the inquiry focuses on whether, if the claimant had been discharged, the separation would have been for a disqualifying reason under G.L. c. 151A, § 25(e)(2).

In this case, even if the claimant reasonably believed that the employer wanted to discharge him, he has failed to show that such discharge was imminent. *See* White, 382 Mass. at 598–599. When asked for his resignation, there is no dispute that the employer wanted his employment to continue for another three months. *See* Consolidated Findings ## 22 and 23. For this reason, the circumstances do not meet the criteria of imminent discharge set forth under Malone-Campagna and White, and we decline to treat this as an involuntary separation.

Because the claimant voluntarily left his employment, we consider the following provision under G.L. c. 151A, § 25(e):

[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 statutory language expressly places the burden of proof upon the claimant.

When a claimant contends that the 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).² The consolidated findings show that, prior to submitting his resignation, the claimant was having difficulty performing his work, and that both parties were concerned about it. *See* Consolidated Findings ## 11 and 14. Importantly for our analysis, the record indicates that the employer was responsible for the claimant’s inability to perform his work satisfactorily.

We can reasonably infer that the claimant’s problematic work performance was at least in part attributable to the employer excluding him from meetings connected to his work tasks and not providing him with information necessary to perform his job duties. *See* Consolidated Finding # 11. It was such a problem that, according to the employer’s human resources witness, they were starting to have conversations about taking corrective action.³

Meanwhile, the employer also seemed to be excluding the claimant from its re-organization plans, as it cross-trained the supervisor on the commercial side of the team to perform work on the

² During the hearing, claimant’s counsel argued that the claimant did not have to prove good cause to leave employment, because he had been asked to quit. As support, he cited 106 CMR 362.340(d). This is a regulation promulgated by the Department of Transitional Assistance for Supplemental Nutrition Assistance. It sets forth definitions for determining eligibility requirements for that benefit program, not the unemployment benefit program, which is governed by G.L. c. 151A, the DUA’s regulations at 430 CMR 1.00 *et seq.*, and the common law jurisprudence interpreting that law.

³ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

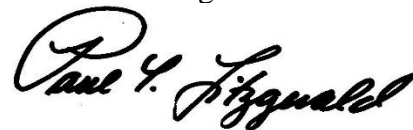
claimant's Medicaid side of the team, but the claimant was not afforded the opportunity to cross-train on the commercial side. Consolidated Finding # 12. By itself, the decision not to cross-train the claimant could be viewed as a reasonable business decision. However, given all of these factors, the claimant could reasonably believe that the employer was deliberately setting him up to fail, even if it had not yet planned to discharge him. *See* Consolidated Findings ## 13 and 26.

Finally, we consider that the claimant tried to address these issues with upper management before submitting his resignation. *See* Consolidated Findings ## 15 and 17. In Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984), the Supreme Judicial Court held that, in order to be eligible for benefits, an employee who voluntarily leaves employment due to an employer's action has the burden to show that he made a reasonable attempt to correct the situation or that such attempt would have been futile. In this case, when the claimant raised all of these concerns with a company Senior Director, including being excluded from meetings, not getting the information he needed to do his work, and not being cross-trained, the Director abruptly asked the claimant to resign. Consolidated Findings ## 17 and 18.

In short, we believe that the employer had made it both very difficult for the claimant to perform his work and clear that it would not do anything about it. The employer's only solution was for the claimant to leave. Under these circumstances, we are satisfied that the claimant left his employment for good cause attributable to the employer. We also believe that the claimant first made a reasonable attempt to preserve his job, and that further attempts would have been futile.

We, therefore, conclude as a matter of law that the claimant met his burden to show that he separated from employment 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 January 2, 2022, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 13, 2023



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