

The claimant failed to show that, when he signed a negotiated, lucrative severance agreement, it was in lieu of imminent layoff or because the employer hindered his ability to assess the likelihood that he would be terminated. By itself, a severance conversation initiated by the employer for budgetary reasons did not constitute good cause attributable to the employer to resign. Held the claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0075 4502 12

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant resigned from his position with the employer on December 18, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 13, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties,¹ the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on December 28, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, he was not disqualified under G.L. c. 151A, § 25(e)(1). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's departure from the employer under the terms of a negotiated severance agreement was for good cause attributable to the employer, 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 employer participated in only the first of two hearing sessions.

1. The claimant was the executive director for a senior adult assisted living center, from September 7, 1997, until December 18, 2021.
2. The claimant was supervised by a board of directors (BOD).
3. The pandemic had strained the employer's finances starting in June 2020 and continued thereon. The center was having enrollment issues. The employer's ability to separately fundraise was also impacted by the pandemic.
4. The (BOD) initiated a conversation with the claimant on or around September 2020 about his continuance as executive director.
5. The employer was a small non-profit and the (BOD) was looking for cost savings, and the claimant was their highest paid employee. The BOD indicated if the claimant resigned, the BOD could reallocate the salary savings to other positions.
6. The claimant's employment contract had language he would be eligible for 5% annual increases in salary and a 5% end of year bonus.
7. The claimant had signed an employment contract with an effective date January 1, 2016, through December 31, 2025.
8. At the time of the claimant's separation from the employer, the claimant's salary was \$230,000.
9. On or around April 21, 2021, the claimant sent a memorandum to the staff and facility residents that he would be retiring in the fall of 2021.
10. On or around April 21, 2021, the claimant sent a letter to the BOD of his intention to leave his employment on or around December 5, 2021.
11. The claimant and the BOD reached a compromise on October 15, 2021, and a severance agreement was signed by the parties.
12. The BOD and the claimant agreed per the severance agreement that the claimant would receive the balance of his employment contract of \$290,000 paid out over two years at \$12,083 per month, \$144,996 per year.
13. On or around December 18, 2021, the claimant separated from the employer.
14. On or around February 17, 2022, a new board of directors informed the claimant that it was suspending his monthly severance payments.
15. The claimant would have remained at his position as executive director if the BOD had not initiated a separation discussion with a severance agreement.

16. The claimant chose to accept the severance agreement because he wanted the employer to have financial flexibility in their budget for the next several years.
17. The claimant quit on December 18, 2021, because the BOD initiated a budget salary reduction and the claimant agreed to accept a severance package instead of serving out the remainder of his contract through December 31, 2025.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is eligible for benefits.

In this case, the claimant elected to end his employment contract early in exchange for a severance package. *See* Finding of Fact # 17. As he resigned, his eligibility for benefits is properly analyzed pursuant to 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 terms, this section of law places the burden upon the claimant to show that he is eligible for unemployment benefits.

At the outset, we note that the claimant's counsel points out in a written statement to the Board that the employer agreed not to contest his receipt of unemployment benefits as part of their signed severance agreement. We are not bound by the contractual terms of this private agreement. The employer has a statutory right to appeal an award of benefits. *See* G.L. c. 151A, §§ 39(b), 40, and 42.

Generally, there are two types of situations in which a claimant can be eligible for benefits in cases where he accepts a compensation package in exchange for ending his employment. The first is characterized as an involuntary departure. It is deemed to be involuntary if the claimant can show that he had a reasonable belief that he would soon be terminated if he did not accept the employer's separation package. *See White v. Dir. of Division of Employment Security*, 382 Mass. 596, 597–598 (1981). In the second circumstance, the separation is deemed to be voluntary but with good cause attributable to the employer. The claimant must show a reasonable belief that he would be terminated and that the employer “substantially hindered the ability of the [employee] to make a realistic assessment of the likelihood that he would be involuntarily separated” if he did not accept the employer's offer. *See State Street Bank and Trust Co. v. Deputy Dir. of Department of Employment and Training*, 66 Mass. App. Ct. 1, 11 (2006).

The findings show that the claimant was a highly paid employee and that his employment contract included guaranteed annual raises and bonuses. *See* Findings of Fact ## 6 and 8. There is no question that the employer was having financial difficulty and initiated a conversation with the claimant about leaving early so that it could save money. *See* Findings of Fact ## 3, 4, and 5. However, nothing in the record indicates that the claimant would have been subject to an imminent layoff or discharge, if he did not resign.

Rather, the record indicates that the claimant made a calculated financial decision to negotiate a severance package rather than continue to work under his contract, and that this was based upon his assessment of his long-term ability to continue in this job. *See* Finding of Fact # 17. During the hearing, he testified that he was told that the employer would not be able to keep him on for the full extent of his remaining employment contract. When asked if the Board of Directors ever told him that he could be faced with adverse consequences if he did not accept the severance agreement, the claimant responded with an emphatic “no.”² This indicates that the claimant was not faced with *imminent* layoff. As such, his departure on December 18, 2021, is not deemed to be involuntary for purposes of analyzing his eligibility for unemployment benefits.

The claimant has also failed to show that this voluntary separation was for good cause attributable to the employer as meant under G.L. c. 151A, § 25(e)(1). Nothing in the record suggests that, as the executive director, he was hindered in his ability to assess his chances of being terminated. *See* Finding of Fact # 1. On the contrary, the record indicates that he had access to the employer’s full financial picture and willingly negotiated a lucrative severance package in return for ending his contract early.

We do not question that the claimant was also motivated by wanting the employer to have financial flexibility in its budget for the next several years. *See* Finding of Fact # 16. However noble this motive, it does not render him eligible for benefits. 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). Here, we see nothing unreasonable about the employer initiating a conversation to end to the claimant’s employment contract early, where the conversation is driven by financial business concerns.

We, therefore, conclude as a matter of law that, because the claimant has failed to show that his resignation from employment was involuntary or for good cause attributable to the employer, he is not eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

² While not explicitly incorporated into the review examiner’s findings, this portion of the claimant’s testimony 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).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning December 18, 2021, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 13, 2023



Paul T. Fitzgerald, Esq.
Chairman



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