

The claimant quit because he felt the employer was not being responsive to his complaint against his supervisor. As the employer immediately initiated an investigation into the claimant's complaint, its decision not to issue the supervisor discipline until the investigation was complete did not give the claimant good cause attributable to the employer for resigning within the meaning of G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0075 5228 76

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 separated from his position with the employer on February 8, 2022. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 14, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on August 12, 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, 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 remanded the case to the review examiner to obtain additional evidence about the circumstances surrounding the claimant's separation. Only the employer attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. 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 quit for good cause attributable to the employer because the employer's business partner could not tell the claimant whether his supervisor would be disciplined until the employer investigated the claimant's complaint, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time as a driver for the employer, a delivery company, from 06/29/2021 until 02/08/2022.
2. The claimant was a member of a union.
3. On 02/05/2022, the claimant was scheduled to work at 9:00 a.m. during a snowstorm. By 10:30 a.m., his delivery truck was stuck in the snow.
4. The claimant immediately called his supervisor and asked him what to do about the truck. The supervisor advised the claimant to call customer service and request towing help.
5. For the next two hours, the claimant worked on getting his truck unstuck while he waited for towing help. By 12:40 p.m., the claimant was successful in his efforts. At that point, the claimant's hands and feet were numb from the cold weather and he did not feel safe driving and completing his delivery route.
6. The claimant called the supervisor again and told the supervisor that due to the numbness in his hands and feet he did not feel safe completing his delivery route. The claimant also asked the supervisor what he should do with the undelivered packages.
7. The supervisor started yelling profanities at the claimant and told him that he was being "a fucking pussy" and was "just afraid of the cold." The supervisor went on to tell the claimant that if he brought the packages back to the facility he would be terminated.
8. After his conversation with the supervisor, the claimant called the business manager (manager). The manager assured the claimant that the supervisor did not have authority to terminate the claimant's employment.
9. When the claimant returned to the facility on 02/05/2022, the manager asked him to return to the office on 02/08/2022 so they could have a meeting with the supervisor and a union representative.
10. Sometime between 02/05/2022 and 02/08/2022, the manager spoke with the supervisor about the 02/05/2022 incident.
11. On 02/08/2022, the claimant attended a meeting with the manager, the supervisor, and a union representative. Multiple times during the meeting, the claimant was asked to step out so that the manager could speak with the supervisor alone.
12. At some point during the 02/08/2022 meeting, the manager spoke the supervisor about the incident from 02/05/2022. The claimant was not present during the manager and supervisor's conversation. The supervisor told the manager that

the conversation with the claimant on 02/05/2022 became “heated” and did not specify further about what was said.

13. The claimant asked multiple times what the supervisor’s consequences were going to be. The manager told the claimant that the consequences would be determined after the investigation. The employer did not indicate when the investigation and would be over and the claimant never received a clear resolution from management about the supervisor.
14. The claimant did not feel comfortable continuing to work with the supervisor and he inquired about transferring to another location.
15. A transfer to another location, department, or supervisor would not have been an option for the claimant because the union contract requires the employer to follow a “bidding procedure” for transfers, which gives priority to employees with seniority.
16. On 02/08/2022, at the end of the meeting, the claimant informed the manager that he was quitting because he did not agree with their lack of response regarding the supervisor’s actions and his discomfort continuing to work with the supervisor.
17. The human resources representative was not employed by the employer during the claimant’s employment. The human resources representative did not observe the events of 02/05/2022 or the meeting on 02/08/2022.
18. On 02/19/2022, the claimant re-opened his 2021-01 unemployment insurance claim with an effective date of 02/13/2022.

Credibility Assessment:

After the conclusion of the hearings, the claimant’s testimony is deemed more credible than that of the employer witnesses due to his own personal knowledge of the incident.

The claimant offered detailed, specific, direct testimony about the events of 02/05/2022, whereas the employer witnesses testified they were not present during the 02/05/2022 incident and did not have personal knowledge on the matter. Admittedly, the human resources representative was not working for the employer during the claimant’s employment and thus, her testimony on the matter came only from the employer’s human resources records alleging that the claimant quit his employment because he was dissatisfied with the job.

The manager admittedly was not present during the incident on 02/05/2022, but he did speak with the claimant on 02/05/2022 and during a follow-up meeting on 02/08/2022. It was undisputed between the claimant and the manager that the claimant asked numerous times during the 02/08/2022 meeting what was going to

happen with the supervisor and was told that the consequences would be determined after an investigation.

The manager testified that he spoke with the supervisor about the 02/05/2022 incident, and the supervisor admitted that the conversation between himself and the claimant became “heated” but alleged that he maintained professionalism. The claimant’s detailed direct testimony rebutted this allegation. The manager admittedly was not provided with further details regarding the “heated” conversation and the supervisor was not presented as a witness to offer direct testimony about his own personal knowledge in this case. As such, the claimant’s testimony regarding the incident in question is deemed more credible than that of the employer.

Given the 02/05/2022 events (yelling profanities and threatened termination) and the lack of a resolution from management about the supervisor during the 02/08/2022 meeting, it was not unreasonable for the claimant to feel uncomfortable continuing to work with the supervisor.

It was undisputed between the parties that the claimant could not transfer. The manager offered detailed testimony that a transfer to another location, department, or supervisor would not have been possible because of the union contract.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner’s consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 16 that states that the claimant resigned because he was uncomfortable continuing to work the with the supervisor as inconsistent with the claimant’s uncontested testimony about the reason why he quit. 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 is entitled to benefits.

As the claimant resigned from employment, his separation is properly analyzed under G.L. c. 151A, § 25(e), 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 place 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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). To determine if the claimant has carried his burden to show good cause under the above-cited statute, we must first address whether the claimant had a reasonable workplace complaint. *See* Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 284 (1985) (claimant's belief that she was being harassed was not a reasonable one).

When the claimant called his supervisor on February 5, 2022, to inform him that he felt unsafe continuing to drive his truck in a snowstorm, his supervisor yelled, swore at the claimant, and threatened the claimant with termination. Consolidated Findings ## 6 and 7. However, by the claimant's own admission, he did not resign because of the supervisor's behavior on February 5th. The claimant's uncontested testimony was that he did not intend to quit prior to the meeting on February 8, 2022. He made the decision to resign because the employer's business partner explained that he could not discuss whether the claimant's supervisor would be issued any disciplinary action until the investigation was complete.¹ Inasmuch as the claimant resigned after this February 8, 2022, meeting, it is his burden to show that the employer's actions in the meeting on February 8, 2022, created a reasonable workplace complaint that warranted resignation.

When the claimant reported the supervisor's behavior, the business manager assured the claimant that his supervisor did not have the authority to terminate his employment and began the process of investigating the claimant's allegations. Consolidated Findings ## 8 and 10. Based on upon his initial inquiry into the incident, the business manager set up a meeting on February 8, 2022, with the claimant, the claimant's union representative, and the supervisor, to try to determine what had been said in the February 5th phone call. Consolidated Finding # 11. Under these circumstances, we believe that the employer reasonably responded to the claimant's complaint by assuring the claimant that his job was not in jeopardy and initiating an investigation into the supervisor's behavior. Further, we believe that the employer's decision to postpone any discipline until completing the investigation was a fair course of action. In short, the claimant has failed to demonstrate a reasonable workplace complaint that caused him to resign on February 8, 2022.

We, therefore, conclude as a matter of law that the claimant resigned his employment without 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 denied benefits for the week of January 30, 2022, 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.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 27, 2023

¹ The claimant's uncontested testimony in this regard 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).



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. declines to sign the majority opinion.

**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.

LSW/rh