

The claimant manager resigned because he disagreed with how the owner was running the business and did not believe the employer supported his efforts to run the business effectively and efficiently. This reason for leaving does not amount to good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). Where the claimant offered to keep working for an indefinite period and the employer accepted the claimant's resignation immediately, there is insufficient information in the record for the Board to consider whether the claimant could have been eligible for benefits during a notice period.

**Board of Review
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Issue ID: 0075 7200 48

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 and filed a claim for unemployment benefits with the DUA, effective February 27, 2022, which was approved in a determination issued on March 15, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on June 17, 2023. 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the employer 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 had good cause attributable to the employer to resign because he believed he was not receiving the necessary support to operate the employer's business effectively and efficiently, 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 worked [sic] full-time shop manager for the employer from August 14, 2021, until his separation on March 4, 2023 [sic].

2. The employer is a franchise automotive service center.
3. The employer [sic] responded to a posting on an online employment site for a service writer and manager candidate which the claimant [sic] had posted. The claimant had experience with both service writing and managing automotive service shops.
4. The claimant worked a fixed schedule of Monday through Friday from 7:30 a.m. until 4:00 p.m.
5. The claimant was supervised by, and reported to, the owner of the business.
6. The claimant was responsible for supervising and managing employees, ensuring that appropriate and quality service was provided to customers, and performing various administrative responsibilities associated with the business.
7. Shortly after commencing employment, the claimant recommended to the owner that policies be implemented, such as smoking, attendance, and cell phone usage, in order to bring discipline to the workplace and increase both efficiency and profitability.
8. The employer was not supportive of either proposal because of the difficulty with hiring and retaining employees.
9. The employer would not allow the claimant to discipline employees because of the difficulty of hiring and retaining employees.
10. On or about March 2, 2023 [sic], the claimant was checking the status of a job in the shop when the technician lashed out at him and walked out of the shop. The claimant contacted the owner, described the incident, and was advised by the owner to apologize to the technician.
11. On March 3, 2023 [sic], the claimant sent an email to the owner advising that he did not believe the business was being properly managed, that he was not receiving the support necessary to effectively run the shop and stated "I am going to give my notice of anywhere from 3-4 weeks or as long as you need to find a replacement for me."
12. On March 4, 2023 [sic], the owner met the claimant at the shop at approximately 8:00 a.m., accepted the resignation effective immediately, and gave him a letter confirming the acceptance of the resignation with separation details.
13. The employer's practice is to make resignations effective immediately.
14. The claimant had no disciplinary issues during the course of his employment.

15. The employer had continued work available to the claimant at the time of his separation.
16. The claimant did not request a leave of absence because he believed, based upon prior experience with the owner, that conditions were not going to change in the foreseeable future.
17. The claimant increased the profitability of the shop during the course of his tenure.
18. The claimant quit on March 4, 2023 [sic] because he did not believe he was receiving the necessary support from the owner to operate the shop effectively and efficiently.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact, except those portions of Findings of Fact ## 1, 10–12, and 18 that contain typographical errors when referencing dates. The unrefuted record establishes that the events leading up to the claimant's resignation and resignation itself occurred in the year 2022, not 2023. In adopting the remaining findings, we deem 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 to receive benefits.

As a preliminary matter, we note that the findings provide that the claimant submitted his resignation notice on March 3, 2022, and, in his notice, stated in pertinent part, "I am going to give my notice of anywhere from 3-4 weeks or as long as you need to find a replacement for me." Finding of Fact # 11. The claimant offered the employer a notice period of unspecified duration, and he did not provide the employer with an intended last date of work. However, the employer accepted the claimant's resignation effective immediately. Findings of Fact ## 12–13.

The Board has previously held that, even where a claimant quits a job for disqualifying reasons, the claimant may still be eligible for some benefit weeks, if the employer discharges that claimant during a notice period and prior to the date on which the resignation would have taken effect. Board of Review Decision 0002 4012 73 (June 20, 2014). The review examiner addressed this issue in his decision, stating, "[since] the claimant's resignation contained no specific end date, it is not reasonable to conclude the claimant was discharged during the notice period. It is concluded that the claimant was not discharged, and § 25(e)(2) does not apply." We do not necessarily agree with the review examiner's assessment that the claimant could not be considered discharged by the employer on March 4, 2022, merely because he did not provide a specific separation date when he gave notice. However, we are nonetheless precluded from fully considering whether the claimant may have been eligible under G.L. c. 151A, § 25(e)(2), for any weeks after March 4, 2022, because the record lacks a specific intended last day of work. Without a definitive effective date of resignation, we are unable to determine the length of the notice period. Without knowing

the length of the notice period, we are unable to ascertain which weeks, if any, the claimant might have been eligible to receive benefits.

Because it is undisputed that the claimant initiated the separation by resigning from his job, this case is properly analyzed under the following provisions of G.L. c. 151A, § 25(e), which state, 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

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under the foregoing provisions, the claimant has the burden of showing that he left employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

The claimant has not alleged that he resigned for urgent, compelling, and necessitous reasons. Therefore, this issue need not be addressed.

Instead, the record establishes that the claimant decided to resign from his position because he did not like how the owner chose to run the business and believed that he was not receiving the support necessary to run the business efficiently and effectively. Finding of Fact # 11. 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. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980).

Here, the review examiner found that the employer did not support the claimant's proposals to implement policies that concerned a variety of topics, including discipline. Findings of Fact ## 7–9. The review examiner also found that, after an incident on or about March 2, 2022, between the claimant and a technician, the employer advised the claimant to apologize to the technician. Finding of Fact # 10. Based on these findings, we can reasonably infer that the claimant was dissatisfied with the way the employer chose to operate its business.

This disappointment, however, does not amount to a good cause attributable to the employer. General and subjective dissatisfaction with working conditions does not provide good cause to leave employment under G.L. c. 151A, § 25(e)(1). *Sohler v. Dir. of Division of Employment Security*, 377 Mass. 785, 789 (1979). *See also* Board of Review Decision BR-98220 (Nov. 22, 2005) (Board held senior vice-president of a company who voluntarily resigned due to a difference of opinion with the company's Board of Directors and CEO on how the business should be run did not leave his position for good cause attributable to the employer). Inasmuch as the findings show that the owner was motivated by his need to retain employees, we believe that the refusal to discipline was reasonable. *See* Finding of Fact # 9.

We, therefore, conclude as a matter of law that the claimant did not quit his 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 denied benefits for the week beginning February 27, 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.¹

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2024



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.

JMO/rh

¹ The review examiner originally determined that the claimant should have been eligible for benefits beginning March 4, 2023. We believe this to be a typographical error consistent with other, similar errors made throughout the decision. Because March 4, 2022, falls on a Friday, we have modified the disqualification start date to reflect the effective date of the claim.