

**Retail sales associate failed to show that the assigned merchandising work was clearly antithetical to the job she was hired to do. Held her resignation was not for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1), and she was ineligible for benefits.**

**Board of Review  
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**Issue ID: 0076 0142 04**

### 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 she resigned for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

The claimant had filed a claim for unemployment benefits, effective March 20, 2022, which was denied in a determination issued by the agency on May 14, 2022. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on October 8, 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 March 13, 2023, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning changes to the claimant's job description. Both parties attended the remand hearing.<sup>1</sup> 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 did not have good cause attributable to the employer to resign over a training to perform job duties that were similar to her own, 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 affirm the review examiner's decision.

### 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:

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<sup>1</sup> The employer participated as a witness only.

1. The claimant worked full-time as a retail sales colleague for a retail store from March 14, 2016, to March 19, 2022.
2. The claimant's rate of pay was \$14.25 per hour.
3. Her job duties included sales service, customer service, cashier, fitting room attendant and product recovery.
4. The precise language for the 2016 job description for the retail sales colleague position at the time of the claimant's hire is unknown.
5. The retail sales colleague job duties have not substantially changed since 2016 up until 2022.
6. The claimant was supervised by the Sales and Customer Experience manager.
7. The claimant was asked by her supervisor to be part of a training where she would partner with merchandise staff, support floor moves, set up style tables, and fold and hang merchandise.
8. This training was part of a company-wide training and all other retail sales colleagues were asked to do the training.
9. The claimant was displeased by this and refused to be part of the training and accept assigned shifts, maintaining to her supervisor that it was not within her job duties as a retail sales colleague.
10. The retail sales colleague job description included job duties that overlapped with the assignments she was asked to do. The job description also requires that the employee perform other functions as needed.
11. The claimant was issued a warning on or about February 18, 2022, regarding a shift that she declined to work.
12. On or about February 18, 2022, the claimant had a meeting with her supervisor and a union representative.
13. The claimant maintained throughout the meeting that she was not going to do the shift.
14. The claimant did not do the shift because she did not want to perform her assigned merchandising job duties.
  - a. The claimant provided her resignation notice on March 7, 2022, and her last day worked was March 19, 2022.

15. The claimant quit her job because she did not want to perform her assigned merchandising duties.

Credibility assessment:

The claimant was unable to provide a job description from 2016. The employer agreed that the specific wording of the job description might have changed from 2016, but further clarified that the job duties did not substantially change from 2016 until the time of the claimant's separation in 2022. Given that the precise changes to the job description are unknown, if any, the employer's manager of business administration's testimony that the functions of the retail sale colleague remained the same is more credible than the claimant's general and unspecific assertions that her job duties substantially changed.

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. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Since the claimant resigned from employment, her 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 . . . [or] if such individual established 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. . . .

The express terms of these provisions assign the burden of proof to the claimant.

When a claimant contends that his or her 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). A requirement to perform work which is clearly antithetical to that for which an individual is initially employed can constitute good cause attributable to the employer to resign. See Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93 (1984), citing Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979).

In this case, the claimant worked for the employer retail store as a retail sales colleague. Consolidated Finding # 1. She resigned because she did not want to perform assigned merchandising duties. Consolidated Finding # 14. The employer had implemented company-wide training to have all retail sales colleagues partner with merchandise staff to be able to support floor moves, set up style tables, and fold and hang merchandise. *See Consolidated Findings ## 7 and 8.* After refusing to do a shift which involved performing these duties and receiving a warning, she submitted her resignation. *See Consolidated Findings ## 11–15.* Specifically, the claimant maintained that merchandising duties were not within her job description. *See Consolidated Finding # 9.*

The only job description included in the original record was one from 2021. The District Court remanded to afford the parties an opportunity to produce a written job description from 2016, when the claimant was hired. Neither party was able to produce the earlier version. As a result, we must rely on the original job description, Exhibit 5, and the parties' testimony to determine whether the employer was requiring the claimant to perform work which was clearly antithetical that that for which she was hired.

As noted in the credibility assessment, the review examiner accepted as more credible the employer's testimony that certain wording in the job description may have changed since 2016, but the job duties did not change substantially. *See Consolidated Finding # 5.* In fact, we note that the 2021 job description is for a retail sales *associate*, not colleague. We do not view this job title change as significant.<sup>2</sup>

Among the duties listed in this job description are “maintain department recovery standards; including fitting room go backs to standard . . . Retrieve additional merchandise for customers as requested. Assist the Support Colleague Team in the movement of fixtures and merchandise for new product, season changes, and clearance sets. . . .” The claimant explained that she worked in the apparel unit.<sup>3</sup> The merchandising tasks that she insists were outside her job description include “support floor moves, set up style tables, and fold and hang merchandise.” Consolidated Finding # 7. It's apparent that these merchandising tasks and the claimant's apparel unit tasks both involved the handling and moving of clothing and fixtures. Given this similarity, are unconvinced that such work was antithetical to that for which she was hired.

During the remand hearing, the claimant testified that sales and merchandising are two separate departments, that she was too busy and could not do what she had to do in the sales department if she had to go to merchandising. However, nothing in the record suggests that the employer expected the claimant to perform both functions at the same time.

To be sure, the employer was implementing some changes in the workplace, which it has a right to do as part of running a business. The claimant's decision to resign rather than adapt to these

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<sup>2</sup> *See* Exhibit 5. Inasmuch as the parties do not dispute that this is the 2021 job description, 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).

<sup>3</sup> This statement and the portions of the claimant's testimony referenced below are also part of the unchallenged evidence in the record.

changes may have been the best personal decision, but it does not render her eligible for benefits because she has failed to show that the employer acted unreasonably.

On appeal and during the remand hearing, the claimant asserted that she also quit because her health deteriorated, which she attributed to her job. She testified to eating less, lack of sleep, physical exhaustion, and indicated that it was due to stress and anxiety. The Supreme Judicial Court has held that an adverse health reaction to a job may render a claimant's resignation involuntary, as is the case where an employee leaves for an urgent, compelling, and necessitous reason. Carney Hospital v. Dir. of Division of Employment Security, 382 Mass. 691 (1981) (rescript opinion) (employee suffering from recurrent, severe skin infection that she believed to be caused by her work environment). When questioned by the review examiner, the claimant testified that her symptoms were mild.

Further, to qualify for benefits, a claimant must first show that she made reasonable efforts to address the problem before resigning so as to indicate her "desire and willingness to continue her employment." Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2009), *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597-98 (1974). Nothing in the record suggests that the claimant made the employer aware of any health issues. As such, the claimant did not give the employer an opportunity to address the problem.

We, therefore, conclude as a matter of law that the claimant did not meet her burden under G.L. c. 151A, § 25(e)(1), to show that she resigned for good cause attributable to the employer, or that her separation was involuntary for urgent, compelling, and necessitous reasons.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning March 20, 2022, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 29, 2024**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. 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](http://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