

**The claimant quit upon being told he was about to be discharged after a student accused him of unlawfully restraining him. However, the review examiner found that the claimant did not unlawfully restrain the student and there is no other evidence of misconduct. Held the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because he resigned in lieu of imminent discharge for conduct that would not have been disqualifying under G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0076 1250 72**

### 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. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from his position with the employer on March 30, 2022. He filed a claim for unemployment benefits with the DUA, effective March 27, 2022, which was approved in a determination issued on April 13, 2022. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on April 22, 2023. The claimant sought review by the Board, which dismissed the appeal because the appeal was filed beyond the statutory appeal deadline set forth under G.L. c. 151A, § 40. Subsequently, the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On October 2, 2024, the District Court ordered the Board to obtain further evidence. Although we continue to maintain that the Board does not have jurisdiction to review this appeal, we have complied with the District Court's order. Consistent with this order, we remanded the case to the review examiner to take additional evidence pertaining to the claimant's separation from employment. Only the claimant 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 did not meet his burden to show he was entitled to benefits because he resigned for unknown reasons, 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 as a full-time assistant principal for the employer, a town, from at least October 2021, through March 30, 2022, when the claimant quit.
2. The claimant worked at a charter school within the employer's structure.
3. The employer's Director of Operations was the claimant's supervisor.
4. On March 2, 2024, the claimant and his team disciplined a student for violating school policies.
5. On March 17, 2024, the student alleged that the claimant unlawfully restrained him.
6. On March 17, 2024, the claimant did not unlawfully restrain the student.
7. On March 21, 2024, the principal informed the claimant that the investigation was concluded and that his job was secure.
8. On March 23, 2024, the employer notified the claimant that they were initiating a termination hearing.
9. On March 24, 2024, the principal and the Director of Human Resources informed the claimant that if he resigned, he would not be terminated, and the employer would not contest his unemployment benefits.
10. On March 28, 2024, the employer's Director of Operations advised the claimant to resign.
11. On March 29, 2024, the claimant submitted his resignation to the employer on the advice of the employer's Director of Operations.
12. On March 30, 2024, the employer accepted the claimant's resignation.
13. The claimant quit to avoid an imminent discharge.

Credibility Assessment:

The claimant did not attend the original hearing. The claimant's reason for resigning was unknown based on the record from that hearing. Thereafter, the claimant attended this remand hearing where he offered specific and detailed testimony indicating that he submitted his resignation after he was advised to do so by his supervisor. In addition, he also relied on the Director of Human Resources' assertion that if he resigned, he would not be terminated. Furthermore, the claimant denies the allegation that he restrained the student.

The employer did not attend the remand hearing.

Given the record, it is concluded that the claimant's testimony is credible.

### 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. There appears to be a typographical error in Consolidated Findings ## 4–12, which state the sequence of events leading up to the claimant's separation occurred in 2024. As the claimant filed this claim effective March 27, 2022, and because the uncontested evidence of record shows the claimant separated from the employer on March 30, 2022, we believe that the review examiner intended to find that the sequence of events leading up to the claimant's separation occurred in 2022. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's initial legal conclusion that the claimant is not entitled to benefits.

Because the claimant resigned from employment, his eligibility for benefits is properly analyzed pursuant to G.L. c. 151A, § 25(e)(1), which provides, in relevant 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 . . .

This statutory provision expressly places the burden of proof upon the claimant.

Following remand, the review examiner accepted as credible the claimant's testimony that he resigned because he learned that the employer intended to terminate him, and that the employer's Director of Human Resources informed him that the employer would not contest his unemployment benefits if he instead chose to resign. Findings of Fact ## 8 and 9. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Upon review of the record, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

The consolidated findings show that, in the days prior to his resignation, the claimant's Principal, the employer's Director of Human Resources, and the claimant's supervisor, the Director of Operations, each indicated to the claimant that he was going to be terminated in connection with an incident involving a student in early March. *See Consolidated Findings ## 4–5 and 8–10*. In light of these findings, we are satisfied that the claimant reasonably believed that he was about to be discharged at the time he resigned.

It is well-settled that an employee who resigns under a reasonable belief that he is facing imminent discharge is not disqualified from receiving unemployment benefits merely because the separation

was technically a resignation and not a termination. *See* Malone-Campagna v. Dir. of Division of Employment Security, 391 Mass. 399 (1984). 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).

As a threshold matter, to be disqualified under G.L. c. 151A, § 25(e)(2), the record must show that the claimant engaged in some misconduct which either violated an employer policy or expectation. Specifically, G.L. c. 151A, § 25(e)(2), provides, in relevant 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. . . .

In this case, the employer's offer for the claimant to resign in lieu of termination stemmed from a student accusation that the claimant had unlawfully restrained him. *See* Consolidated Finding # 5. However, the review examiner found that the claimant did not unlawfully restrain the student. Consolidated Finding # 6. Inasmuch as there is no evidence that the claimant engaged in any other misconduct to warrant being discharged, there is no basis to disqualify him under G.L. c. 151A, § 25(e)(2).

We, therefore, conclude as a matter of law that the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because he left his employment under the reasonable belief that he was about to be discharged for reasons that would not be disqualifying under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of March 27, 2022, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 16, 2025**



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](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.

LSW/rh