

Where the claimant’s manager repeatedly yelled at her in front of customers and co-workers, refused to let the claimant go to the bathroom, and prohibited the claimant from talking other employees, the claimant demonstrated a reasonable workplace complaint. However, the claimant did not take reasonable steps to preserve her employment. She did not inform the owner of the ongoing issues with the manager even though the owner had shown a willingness to address workplace issues with the manager and was in direct contact with the claimant. The claimant is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0076 6124 42

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 her position with the employer on April 28, 2022. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 17, 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 September 15, 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party 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 was being bullied by her manager and believed any further efforts to preserve her employment would have been futile because the employer’s owner was unavailable at the time the claimant separated, 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 full-time as a shift leader for the employer, a fast-food restaurant, from July 20, 2021, through April 28, 2022.

2. The claimant's supervisor was the employer's manager (manager).
3. The fast-food restaurant was owned by two individuals (fast-food owner[s]).
4. The fast-food restaurant was located inside a gas station owned by a different owner (gas station owner).
5. There were multiple incidents where the claimant was bullied by the manager, creating a hostile work environment. Bullying incidents included but were not limited to being yelled at in front of customers, being yelled at in front of other coworkers, being told not to go to the bathroom and being told not to talk to coworkers.
6. The gas station employees witnessed several incidents and reported the manager's behavior to the fast-food owner.
7. After being spoken to by the fast-food owner, the manager informed the claimant in the future, if they were having issues and/or concerns to go directly to the manager and not to the fast-food owner.
8. After the fast-food owner spoke to the claimant, the manager continued to bully the claimant.
9. The fast-food owner had multiple locations, one of which was down the street from where the claimant worked.
10. The claimant requested to be moved to a different location and their request was denied.
11. The claimant, concluding that the employer's hostile work environment was not improving, decided to quit their employment.
12. The claimant would not have left if the situation with the manager was resolved.
13. On April 28, 2022, the fast-food owner and gas station owner were not available. One owner was on vacation and the other owner was on maternity leave.
14. The claimant quit their employment with the employer on April 28, 2022, because of a hostile work environment.
15. After filing their claim for unemployment insurance benefits, the owner reached out to the claimant multiple times. The claimant did not respond because they were already separated from the employer and wanted to move on.

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 as follows. We reject Finding of Fact # 8 as inconsistent with the claimant's uncontested testimony. We also reject the portion of Finding of Fact # 13 which indicates that the employer's owner was unavailable on the day the claimant resigned as inconsistent with the evidence of record. 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 legal conclusion that the claimant reasonably believed any further steps to preserve her employment would have been futile.

As the claimant resigned from her employment, her qualification for benefits is governed by 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 . . . [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.

Under this section of law, the claimant has the burden to show that she is eligible to receive unemployment benefits.

The claimant testified that she chose to resign because her manager was creating a hostile work environment, and she felt that her employer was not adequately addressing her concerns. Finding of Facts ## 5, 7, and 11. Therefore, we must consider whether she had "good cause for leaving attributable to the employing unit or its agent" within the meaning of G.L. c. 151A, § 25(e)(1).

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 her 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) (noting that the standard is one of reasonableness in quit situations). As the claimant testified that she quit her job due to the ongoing unprofessional behavior of her manager, it is her burden to show that this behavior was sufficiently egregious or objectionable to create good cause for her to quit her job.

The claimant explained that her manager would regularly yell at her in front of customers and co-workers, would instruct the claimant not to go to the restroom, and would prohibit the claimant from talking with other employees. Finding of Fact # 5. The fact that individuals unaffiliated with the employer's restaurant felt they had to report the manager's unprofessional behavior to the employer's owner further indicates that this behavior was not an isolated incident or a misunderstanding on the part of the claimant. Finding of Fact # 6. Viewing these events in the

aggregate, we conclude that the claimant has articulated a reasonable workplace complaint regarding the manager's behavior.

Our analysis does not end there, however. The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). We believe that the review examiner erred in concluding that the claimant reasonably believed any further efforts to preserve her employment would have been futile at the time she chose to resign.

After learning of the manager's unprofessional behavior from the gas station employees, the owner had a meeting with the manager to address these reports. *See* Findings of Fact ## 6 and 7. The claimant testified that the manager's behavior did improve for a short period of time ¹ This testimony evidences the owner's willingness to address concerns about the manager and the overall work environment.

After that meeting, the manager informed employees that they were to report any concerns to her and not the owner. Finding of Fact # 7. While the claimant testified at the hearing that such an instruction dissuaded her from contacting the owner, this testimony is inconsistent with the documentary evidence of record. Text messages between the claimant and owner, dated April 27, 2022, show that they were communicating directly the day before the claimant chose to quit. These texts, which were admitted into evidence as Exhibit 1, indicate that the owner had agreed to speak with the claimant about an unknown issue, but the claimant later declined because the issue was "something personal" and it was "all good lol." Despite this, the owner again reiterated that she was available and willing to speak with the claimant.² This evidence demonstrates both that the claimant was willing to communicate directly with the owner and that she knew the owner was available to discuss any work-related issues with the claimant at the time she resigned.

Instead of continuing this conversation with the owner and explaining the manager's unprofessional behavior, the claimant chose to resign. *See* Finding of Fact # 14. As the claimant knew the owner was both willing to and available to speak with her at the time she resigned, we do not think it was reasonable for the claimant to quit without giving the owner the opportunity to address the manager's unprofessional behavior. Accordingly, we believe that the review examiner erred in concluding that the claimant reasonably believed any further attempts to preserve her employment would have been futile.

We, therefore, conclude as a matter of law that the claimant did not meet her burden pursuant to G.L. c. 151A, § 25(e)(1), to show that she took reasonable steps to preserve her employment before quitting.

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).

² Exhibit 1 is also part of the unchallenged evidence introduced at the hearing and placed into the record.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending April 24, 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.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 27, 2022



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

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