

Where the Board concluded that there was no objectively reasonable basis for the claimant to be concerned about her safety at the new office location, her resignation was not for good cause attributable to the employer or urgent, compelling, and necessitous reasons. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0078 0042 88

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 affirm.

The claimant resigned from her position with the employer on August 4, 2022. She filed a claim for unemployment benefits with the DUA, effective July 31, 2022, which was denied in a determination issued on August 20, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on January 27, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without establishing good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, she was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for benefits because she failed to show that she was exposed to danger at a new work location, 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 an operations manager for the employer, a real estate company, from 5/18/2020 until her last physical day of employment on 8/4/2022.
2. The claimant worked a varied schedule and earned an annual salary of approximately \$70,000.

3. The claimant reported directly to the owner.
4. Upon hire, the claimant worked at an office located in [City A], MA.
5. In July 2022, the employer opened a new office in [City B], MA. The claimant was assigned to work from the [City B] location.
6. The claimant's first day of work at the [City B] location was on 7/28/2022.
7. The new office was located in a building with shared office spaces that businesses could lease.
8. On 7/29/2022, the claimant arrived at work at approximately 8:00 a.m. The claimant was alone at the office.
9. At approximately 10:00 a.m., the claimant was in the office unpacking boxes and was approached by a man who asked to use a phone charger. The claimant told him to wait in the building lobby (lobby) and she would bring him a phone charger. The claimant assumed the man worked in the building.
10. The claimant went to the lobby and handed the man a phone charger. She remained in the lobby with the man and they engaged in casual conversation. The claimant realized that the man did not work in the building when he shared a story of his girlfriend who lived in a neighboring "trailer park."
11. The claimant began to feel uncomfortable but remained in the lobby with the man as she waited for the owner to arrive. The owner [arrived] between 11:00 a.m. and 12:00 p.m. and went directly to the office.
12. Around 11:30 a.m., a technician arrived to pick up a laptop from the employer's office. The claimant went to the office with the technician and told the man in the lobby, "when you are done with the charger, please see your way out."
13. At approximately 12:00 p.m., the claimant decided to go home for lunch. Almost an hour later, the claimant returned to work and saw the man's personal belongings were still in the lobby. The claimant did not see him in the lobby but could hear noise coming from the bathroom.
14. The claimant approached a building receptionist and asked her to call the police because she was concerned with the length of time the man remained in the building.
15. About 20 minutes later, the police arrived and entered the bathroom. The police found the man doing drugs in the common area bathroom and he was removed from the building by ambulance.

16. At approximately 2:30 p.m., the claimant told the owner about the incident and expressed her safety concerns.
17. On 7/30/2022, the owner sent the building landlord (landlord) an email stating “We had a very serious and disturnig [sic] incident in the new space yesterday in that a homeless man settled into the lobby for most of the day and was eventually taken from the bathroom by police and in an ambulance.” The email further stated, “Obviously, this was an extremely upsetting event for [Claimant] and immediate security steps need to be taken to ensure that it never happens again. The most obvious is to lock the front door.”
18. The landlord told the owner that they were not able to lock the front door during business hours because of incoming deliveries.
19. Between 7/30/2022 and 8/4/2022, the claimant continued to work at the [City B] location.
20. On 8/4/2022, the claimant told the owner that she was quitting her employment because of safety concerns resulting from the prior incident. The claimant offered to work remotely for two weeks if he agreed to pay her more. The owner did not agree and the claimant quit effective immediately.
21. The claimant quit her employment because she was dissatisfied with the owner’s response to her safety concerns and upset that the landlord did not agree to lock the front doors.
22. Prior to resigning, the claimant did not request to work from another location because she assumed the owner would not approve her request since she worked with the escrow accounts.
23. The employer had work available for the claimant had she not quit her employment.
24. The claimant’s job was not in jeopardy when she chose to quit her employment.
25. On 8/10/2022, the claimant filed a claim for unemployment benefits effective 7/31/2022.
26. On 8/20/2022, the Department of Unemployment Assistance (DUA) issued a Notice of Disqualification finding the claimant ineligible for benefits. The claimant appealed that determination.

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 conclusion is free from error of law. Upon such

review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. We also agree with the review examiner's legal conclusion that the claimant is ineligible for benefits, as discussed below.

The first question is whether to analyze this separation as a resignation pursuant to G.L. c. 151A, § 25(e)(1), or a discharge pursuant to G.L. c. 151A, § 25(e)(2), for purposes of unemployment benefit eligibility. On August 4, 2023, the claimant told the employer that she was resigning but would continue to work for another two weeks, if he paid her more and she could work remotely. Because the owner would not agree to the new terms, her employment ended that day. *See* Finding of Fact # 20. Effectively, the claimant was unwilling to continue to work under the same terms and conditions of employment. When the owner refused the new terms, we agree that the decision to end her employment at that point was hers.

As this was a resignation, the claimant's eligibility for benefits is properly analyzed pursuant to the following provisions under G.L. c. 151A, § 25(e), which state, 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 . . . [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.

These statutory provisions expressly assign the burden of proof to the claimant.

In this case, the claimant quit over safety concerns about her workplace. *See* Finding of Fact # 21. This stemmed from an incident in her building on July 29, 2022. *See* Findings of Fact ## 9–15. 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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

The Supreme Judicial Court has stated that intolerable working conditions, such as substandard sanitation or temperature, that contribute to an exposed employee's physiological discomfort or demise or conditions which subject the employee to liability may constitute good cause attributable to the employer to resign. Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979) (further citations omitted). However, general and subjective dissatisfaction with working conditions does not. Id.

Here, the claimant believed that her personal safety was in jeopardy by continuing to work at a new office location. *See* Findings of Fact ## 19 and 20. We have held that safety deficiencies in the workplace may constitute good cause attributable to the employer to leave a job, provided that the claimant can show that the safety concerns are reasonable. Board of Review Decision BR-119197 (Feb. 13, 2012) (dental assistant resigned over reasonable belief that the employer's disposal of sharps was unsafe as evidenced by OSHA citations).

In the case before us, there is no question that the claimant felt uncomfortable working in the new office location because of the incident on July 29, 2022. *See* Findings of Fact ## 16 and 20. In order to evaluate whether her concerns rose to good cause attributable to the employer, we must first consider whether, using an objective standard, her belief that the premises were unsafe was reasonable. Fergione v. Dir. of Employment Security, 396 Mass. 281, 284–285 (1985) (claimant’s belief that she was being harassed was not a reasonable one).

The findings show that, on July 29, 2022, what appears to have been a homeless man entered the building and approached the claimant’s office asking to use a phone charger at about 10:00 a.m. Finding of Fact # 9. He complied with the claimant’s request to return to the lobby, where she brought him the charger and started talking to him. Finding of Fact # 10. Even though the claimant felt uncomfortable, she continued to stay and talk with this person in the lobby for another hour and a half. *See* Findings of Fact # 11–12. The claimant further testified that, during this time, the man was not threatening or doing anything wrong; he was just asking for a phone charger. She described how when she finally left at 11:30, he said, “Okay, thanks so much. Nice talking to you.”¹ By the claimant’s own admission, nothing about this polite, even friendly, interaction was dangerous.

After returning from lunch, the claimant saw the man’s belongings still in the lobby, heard running water in the men’s bathroom, and asked the receptionist to call the police. *See* Findings of Fact ## 13 and 14. When the police arrived, they discovered that the man had been doing drugs and he was removed by ambulance. Finding of Fact # 15. Even if, as the evidence suggests, the man had become incapacitated, we fail to see how his behavior posted a risk of harm to anyone besides himself.

In our view, the claimant has described a working environment that made her uneasy.² She may not have wanted to be exposed to homelessness or drug use, and leaving may have been the best personal decision. That is her prerogative. However, the evidence does not show that at any time her personal safety was at risk. She has not shown an objectively reasonable belief that unsafe working conditions rendered her working conditions intolerable. For this reason, these working conditions do not rise to good cause attributable to the employer as meant under the statute.

Nor has she demonstrated that the employer acted unreasonably in response to her concerns. The employer complied with the claimant’s request to ask the landlord to lock the front building entrance. However, the landlord needed the entrance to remain unlocked to allow for deliveries. *See* Findings of Fact ## 17 and 18. As the employer tried to seek the accommodation that she asked for, but the landlord’s logistical business needs made that impractical, there is also nothing about the situation that created good cause attributable to the employer to resign.

We next consider whether the claimant separated for urgent compelling and necessitous reasons within the meaning of the statute. Our standard for determining whether a claimant’s reasons for

¹ While not explicitly incorporated into the review examiner’s findings, this testimony and the portion of her testimony referenced below are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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 She testified that the office building was surrounded by trailer parks and a gas station and asserted that she witnessed a drug deal in the parking lot when she came into work on Saturday.

leaving work are urgent, compelling, and necessitous has been set forth by the Supreme Judicial Court. We must examine the circumstances in each case and evaluate “the strength and effect of the compulsive pressure of external and objective forces” on the claimant to ascertain whether the claimant “acted reasonably, based on pressing circumstances, in leaving employment.” Reep v. Comm’r of Department of Employment and Training, 412 Mass. 845, 848, 851 (1992). Inasmuch as we have concluded that there was no objectively reasonable basis for the claimant to be concerned about her safety, the claimant has not shown that her working conditions compelled her to leave her job. Thus, her departure was not due to urgent, compelling, and necessitous circumstances.

We, therefore, conclude as a matter of law that the claimant’s separation from employment was a voluntary resignation. We further conclude that it was not due to good cause attributable to the employer or urgent, compelling, and necessitous circumstances within the meaning of G.L. c. 151A, § 25(e).

The review examiner’s decision is affirmed. The claimant is denied benefits for the week beginning July 31, 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 - February 28, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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.

AB/rh