

The claimant, a manager and bartender of a restaurant, had good cause attributed to the employer to resign when the owner removed the claimant from his management duties. The work became unsuitable and further attempts to preserve his employment as a manager were futile, where the owner's decision was final. Held the claimant was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0078 8950 50

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 resigned from his position with the employer on October 31, 2022. He filed a claim for unemployment benefits with the DUA, effective December 25, 2022, which was denied in a determination issued on February 17, 2023. 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 May 5, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant resigned from his employment without good cause attributed to the employer or an urgent, compelling, and necessitous reason and, thus, 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 quit his employment merely due to a business disagreement with the owner, 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 was a minority shareholder of the employer, a pub/restaurant, and worked full-time as the general manager and bartender from January 17, 2014, through October 31, 2022.

2. The claimant's duties included, but were not limited to, ordering items, scheduling employees, handling day-to-day operations and working as a part-time bartender.
3. The claimant's supervisor was the employer's majority shareholder ("MO").
4. When the claimant initially purchased the minority share of the business, the parties had an understanding the claimant would be given the opportunity to buy out the remainder of the business within two (2) to three (3) years. There was no formal written agreement, it was a verbal "handshake" agreement.
5. On March 13, 2022, MO filed the corporation's fiscal report with the Secretary of the Commonwealth for the year ending December 31, 2021. The claimant was listed as a director of the restaurant. MO was listed as the president, treasurer, secretary, and director.
6. In late September 2021, the claimant offered to purchase additional stock from MO. The claimant was looking to become seventy-five percent (75%) owner. MO never responded to the claimant's offer.
7. On October 31, 2022, the claimant reapproached MO about the potential buy-out. MO informed the claimant they were not going to sell their portion of the restaurant as they had previously agreed to.
8. The claimant and MO had a heated argument during which MO informed the claimant they were removing them from the management position and keeping them [sic] as a bartender.
9. Additionally, MO offered to buy the claimant out; however, the claimant believed the offer was for less than market value.
10. The claimant informed MO they would stay on as manager until January 1, 2023; however, they were informed by MO the change was effective immediately.
11. MO had control of the finances and refused to pay the claimant all associated distributions due to them as minority shareholder of the business.
12. Instead of staying on as a bartender, the claimant walked away from the business. The claimant left because MO did not agree to sell their shares to the claimant.
13. On March 13, 2023, MO filed the corporation's fiscal report with the Secretary of the Commonwealth for the year ending December 31, 2022. MO is listed as the sole officer and director of the corporation.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not entitled to benefits.

As the claimant resigned from employment, his separation is properly analyzed under 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

The explicit language in G.L. c. 151A, § 25(e)(1) places the burden of persuasion on the claimant. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

To determine whether the claimant had good cause attributable to the employer to resign, we are instructed to focus 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). Here, the claimant's separation from employment arose from a dispute between the majority owner and the claimant over the sale of the business to the claimant. Findings of Fact ## 7 and 8. On October 31, 2022, the majority owner then told the claimant that she was removing him from his manager position and only wanted him to work as a bartender. Findings of Fact ## 7 and 8. The claimant offered to stay as a manager until January 1, 2023, but the owner refused. Finding of Fact # 10. Ultimately, the claimant walked away from the job. Finding of Fact # 12.

Finding of Fact # 12 states that the claimant left his employment because the majority owner did not want to sell her shares of the business to the claimant. We consider whether leaving work due to a business disagreement constitutes good cause attributed to the employer. It is well-settled law that "intolerable working conditions [which] has generally been understood to import substandard sanitation, temperature, ventilation, or other like factors which may contribute to the physiological discomfort or demise of exposed employees" constitute good cause for leaving employment. Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979). General and subjective dissatisfaction with working conditions does not. Id. Ordinarily, disagreements involving business decisions do not constitute good cause attributable to the employer to quit employment. *See* Board of Review Decision BR-98220 (Nov. 22, 2005) (dispute with the Board of Directors over a business decision did not constitute good cause for a CEO to leave employment).

Here, the claimant has not met his burden to show that the majority shareholder's refusal to sell her shares on October 31st was unreasonable. Generally, shareholders have the right to decide when to sell their stock. In the record before us, there was no written agreement stating that the owner would sell his business to the claimant. The findings merely refer to a verbal understanding

that the claimant could buy out the business at some vague point in the future, two to three years later. *See* Finding of Fact # 4.¹

However, we do not accept that the claimant's only reason to quit his employment was because of a business disagreement. The majority owner had also removed a substantial amount of the claimant's job duties. Finding of Fact # 8. Even if the claimant did leave his employment in part because the majority owner refused to sell her shares to him, the majority owner reacted to the argument by removing all of the claimant's managerial job duties. We believe that this action triggered the claimant's separation from employment.

In order to determine whether this employer's action gave the claimant good cause to quit, we must determine whether the changes in job duties rendered the claimant's job unsuitable. "Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of 'good cause.' *See Graves v. Dir. Of Division of Employment Security*, 384 Mass. 766, 768 n. 3 (1981)." *Baker v. Dir. Of Division of Unemployment Assistance*, No. 12-P-1141, 2013 WL 3329009 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*. In determining the suitability of a job, factors to be considered include whether the wages meet his accustomed compensation and whether the job utilizes his full skills and capacity. *Pacific Mills v. Dir. of Division of Employment Security*, 322 Mass. 345, 349–350 (1948).

We realize that not every situation where an individual's job duties are changed constitutes good cause to resign within the meaning of the above statutory provision, and the facts and circumstances of every case must be analyzed. In this case, the claimant's full-time manager and bartender employment suddenly became only a part-time bartender job. *See* Findings of Fact ## 1 and 8. We can reasonably infer that this change from full-time to part-time would result in a substantial reduction of his accustomed compensation. A substantial decline in wages may render a job unsuitable and constitute good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1). *Graves*, 384 Mass. 766, at 768.

Further, the findings indicate that removing the managerial responsibilities substantially altered the nature of the claimant's job, as he would no longer be ordering items, creating employee schedules, and handling the day-to-day operations of the restaurant. *See* Finding of Fact # 2. This meant that the job would no longer utilize the claimant's full skills and capacity. After these changes, we believe his job became unsuitable. *See* Board of Review Decision 0017 2866 38 (July 14, 2016) (the claimant hired to be an activities director was later transferred to being an aide had good cause to resign because the new position was unsuitable).

The next issue to address is whether the claimant attempted to preserve his employment prior to quitting. 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 he made a reasonable attempt to correct the situation, or that such attempt would have been futile. *Guarino v. Dir. of Division*

¹ The claimant has presented a Promissory Note, Exhibit 8, showing an agreement to pay \$133,478.59 over eight years to what may have been another owner. However, the document is unsigned, and it does not state that the payments were for the purchase of the restaurant. Therefore, we give it little weight. We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

of Employment Security, 393 Mass. 89, 93–94 (1984). Here, Finding of Fact # 10 shows that the claimant tried to keep his full-time position longer. However, he was told the decision to keep him only as a part-time bartender was effective immediately. Finding of Fact ## 8 and 10. This offer to remain employed as a manager constituted a reasonable attempt to preserve his employment. We agree that any further efforts would have been futile because the majority owner indicated that the decision was final. *See* Finding of Fact # 10.

We, therefore, conclude as a matter of law that the claimant established good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning December 25, 2022, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 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.

MR/rh