

The claimant left her employment to pursue an independent contractor sales agent position with the same employer. She ultimately did not start the sales agent position because the parties could not agree to the terms of the sales agent contract. The claimant failed to show that she left for good cause attributable to the employer, and she is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0079 8116 61

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 separated from her position with the employer on March 31, 2023. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 11, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on July 7, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer, or urgent, compelling, and necessitous reasons and, thus, was 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 claimant's appeal, we remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's transition into a sales agent role. Both parties 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 is supported by substantial and credible evidence and is free from error of law, where the review examiner concluded that the claimant's decision to leave her property management position and not pursue a sales agent position with the employer was neither for good cause attributable to the employer, nor urgent, compelling, and necessitous reasons.

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 full-time as a property manager for the employer from 4/26/2021 until 3/31/2023.
2. The claimant earned an annual salary of \$145,000.00 and reported directly to the chief financial officer (CFO).
3. A former broker retired. The claimant was familiar with the contract terms for the former broker, including the former broker's 30-year work history earning the same commission with the employer. This prompted the claimant to express interest in becoming a broker.
4. Sometime in August, 2022, the claimant began to discuss a "brokerage plan" with the employer where she would transition to working with the employer as an independent real estate sales agent.
5. On 8/13/2022, the claimant sent the president and manager an email to plan a meeting to discuss the "plans for brokerage." The claimant wrote, "I am ready to do jump full steam ahead into brokerage. You all ready?"
6. The claimant committed to transition to work as an independent real estate sales agent for the employer.
7. The employer relied on the claimant's commitment to transition to work as an independent real estate sales agent and agreed to hire a new property manager to replace the claimant when she transitioned to the new role.
8. The parties agreed that the claimant would sign a brokerage contract prior to transitioning into the independent real estate sales agent role. The employer did not expect there to be any dispute on the terms of this "Broker Independent Contractor Agreement."
9. The parties did not agree at any point that the claimant would only leave the property management position if they were able to agree upon a contract for the independent real estate sales agent position.
10. Prior to March, 2023, the parties did not discuss what the claimant's compensation and other particulars of the role would look like once the claimant fully transitioned to the independent real estate sales agent position.
11. Prior to March, 2023, the parties did not discuss a specific date when the claimant was anticipated to transition to the independent real estate sales agent role.
12. On 9/29/2022, the claimant signed an Employment Agreement with the employer. The Employment Agreement did not contain any language related to the claimant's future transition to an independent real estate sales agent.

13. In January, 2023, the employer hired a new property manager to replace the claimant when she transitioned into the independent real estate sales agent role.
14. By February, 2023, the new property manager was trained and able to work independently.
15. Since the new property manager was able to work independently beginning in February, 2023, the employer scheduled the claimant's transition from property manager to independent real estate sales agent for 3/31/2023.
16. On 3/17/2023, the president sent the claimant an email stating "you will be transitioning 100% to a salesperson role as of 03/31/2023." The email further indicated that as an independent real estate sales agent "you will be a 1099 independent contractor and no longer an employee of the firm as of 03/31/2023." The president concluded the email with, "I know that you will do well as a broker and am looking forward to watching your career as a salesperson grow."
17. On 3/20/2023, the claimant replied to the president's email and asked, "when will the new proposed contract be ready for review?" The claimant also asked, "if we are not able to reach an agreement on a new proposed contract what happens?"
18. On 3/24/2023, the employer sent the claimant a "Broker Independent Contractor Agreement" in anticipation of the claimant's upcoming transition to an independent real estate sales agent role. The agreement was a ten-page document and was drafted by the employer using an industry standard brokerage agreement.
19. On 3/28/2023, the CFO sent the claimant an email stating, "I wanted to be sure you received the draft of your agreement sent last Friday. Would you please confirm?"
20. On 3/31/2023, the CFO sent the claimant an email confirming that it was the claimant's last day as an employee of the employer. The CFO wrote, "We have not heard from you regarding the broker agreement that was drafted and sent to you. We would like to finalize this agreement with you as we hope you will be up and running as a full broker on Monday [04/03/2023]."
21. On or around 4/4/2023, the claimant returned the draft broker agreement to the employer with various proposed changes. The claimant reduced the agreement to six pages and changed the title to "Independent Real Estate Sales Agent Exclusive Agreement." The employer agreed to discuss the proposed changes with their lawyer.
22. The claimant made changes to the draft agreement because she felt the "terms were not favorable" to her.

23. The employer did not agree to the claimant's proposed changes to the agreement.
24. The claimant did not start working as an independent real estate sales agent for the employer.
25. The claimant quit her employment when she decided not to pursue the independent real estate sales agent role with the employer.
26. The employer had work available for the claimant as an independent real estate sales agent had the claimant not quit her employment.
27. On 4/4/2023, the claimant filed an unemployment claim effective 4/2/2023.
28. On 5/11/2023, the Department of Unemployment Assistance (DUA) issued a Notice of Disqualification. The claimant appealed that determination.

Credibility Assessment:

There was a dispute between the parties about whether they agreed at any point that the claimant would only leave the property management position if they were able to agree upon a contract for the independent real estate sales agent position. In the remand hearing, the claimant alleged that such an agreement existed, while the employer did not. The claimant's allegation was not credible because the claimant could not specify when such conversation occurred or who she spoke with.

The employer witness's testimony was reasonable, logical, and believable that they relied upon the claimant's commitment to transition to an independent real estate sales agent to hire a new property manager to replace the claimant as she transitioned to the new role.

Both the claimant and employer witnesses testified that the terms and compensation of the new independent real estate sales role were never discussed in detail prior to March, 2023. The CFO credibly explained that this was because the claimant was familiar with the contract for the previous broker, and they did not expect a dispute on the contract terms. While the claimant alleged that she was not familiar with the contract terms for the previous broker, this is not believable given that the claimant's familiarity with the broker role (including the previous broker's 30-year work employment history earning the same commission) was what initially made her express interest in becoming a broker when the previous broker retired.

It was undisputed that prior to March, 2023, the parties did not discuss a specific date when the claimant was expected to transition into the independent real estate sales role. The employer witnesses emphasized that although a specific date of transition was not discussed prior to March, 2023, the parties discussed that the

claimant's transition to the independent real estate sales role would happen once the employer hired a property manager to replace the claimant.

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.

Because the claimant resigned from her position with the employer, her separation will be analyzed under the following provisions in G.L. c. 151A, § 25(e), which state, 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. . . .

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new *employment* on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit. (Emphasis added).

The express language in these provisions places the burden of proof upon the claimant.

There is no indication in the record that the claimant resigned from her position with the employer due to an urgent, compelling, and necessitous reason.

After remand, the review examiner found that, while working as a property manager for the employer in August, 2022, the claimant began pursuing a position as an independent real estate sales agent (sales agent) with the employer, which was an independent contractor role. *See Consolidated Findings ## 1 and 3–5.* The employer agreed to this change in the claimant's employment status. *See Consolidated Finding # 7.* It is undisputed that the parties did not set a specific date on which the claimant's transition to the sales agent position would take place. *See Consolidated Finding # 11.* The parties did, however, discuss that the transition would take place once the employer hired and trained a property manager to replace the claimant. *See Consolidated Findings ## 13 - 15, and the credibility assessment.*

The new property manager was hired in January, 2023, and was fully trained by the end of February, 2023. *See Consolidated Findings ## 13 and 14.* On March 17, 2023, the employer notified the claimant that her last day as a property manager would be March 31, 2023, and she would transition to the sales agent position at that time. *See Consolidated Finding # 16.* Ultimately, the parties could not agree to the terms of the sales agent contract, and, as a result, the claimant never commenced her role as a “1099 independent contractor” with the employer. *See Consolidated Findings ## 16–26.*

In light of these findings, we cannot conclude that the claimant left her employment as a property manager in good faith to accept new *employment* that was subsequently terminated for good cause attributable to the new employer. Specifically, because the claimant’s new role would be as a sales agent in the field of real estate, it has not been established that she left her property management position for a new position that is included in the definition of “employment” under the state law governing unemployment benefits. *See G.L. c. 151A, § 6(p).* Further, even if the sales agent position were considered employment under the statute, the claimant did not establish that she was unable to commence that position for good cause attributable to the employer.

To show 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). In this case, the claimant decided to quit her position as a property manager in order to pursue a different opportunity and not because of wrongdoing on the part of the employer. Although the record as a whole indicates that the sales agent position would be permanent and full-time, the parties did not discuss other material terms of the sales agent contract, such as compensation, before the claimant agreed to assume that role. *See Consolidated Finding # 10.* Because no promises were made to the claimant regarding those terms, the employer’s inability to meet her expectations on the terms of the contract does not constitute wrongdoing on its part.

The claimant further contended that the parties had agreed that the claimant would only leave the property management position if they first came to an agreement on the sales agent contract. The review examiner did not find this contention credible, and we believe this to be a reasonable determination based on the evidence presented. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

The claimant’s March 20, 2023, email to the employer fully supports the review examiner’s determination. As the parties were trying to come to an agreement on the terms of the sales agent contract, the claimant asked the employer in this email, “if we are not able to reach an agreement on a new proposed contract what happens?” *See Consolidated Finding # 17.* This question indicates that the parties did not in fact have an agreement in place that the claimant would *only* leave her property manager role if they could first agree on the terms of the sales agent contract. The claimant would have no need to ask about the consequences of failing to reach an agreement if it had already been decided that the specific consequence would be that the claimant would remain in the property manager role.

In light of the above, the claimant has not established that the employer misled her in any way when she decided to leave her property management position, and, therefore, the claimant’s separation was not the result of good cause attributable to the employer.

We, therefore, conclude as a matter of law that the claimant voluntarily left employment without good cause attributable to the employer as meant under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending April 8, 2023, 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 - November 20, 2023



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.

SVL/rh