Following an incident where the claimant alleged his supervisor threatened him and wrongly accused him of misconduct, the employer offered the claimant a transfer and opened an investigation. The claimant failed to show that his leaving was under a reasonable belief of imminent discharge or for good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0079 9746 01

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 filed a claim for unemployment benefits with the DUA, effective December 18, 2022. He subsequently resigned from his position with the instant employer on April 17, 2023. On May 18, 2023, the DUA issued a determination under G.L. c. 151A, § 25(e)(1), denying benefits to the claimant. 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 July 1, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant left employment under a reasonable belief of imminent discharge 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 remanded the case to the review examiner to give the employer an opportunity to testify and provide other evidence. 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, which concluded that the claimant left employment under a reasonable belief of imminent discharge, is supported by substantial and credible evidence and is free from error of law, where the claimant quit before the employer concluded its investigation.

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 an Armed Security Officer for the employer, an armed security company, from 2/3/23 until he separated from the employer on 4/17/23.

2. The claimant was hired to work full-time, earning $19.00 an hour.

3. The claimant left work because of [sic] an unreasonable reprimand by his supervisor, the Lieutenant, led him to believe that he would soon be discharged.

4. On 4/12/23, the claimant was assigned to his normal post. When getting ready to go to his post, he was called over by the Lieutenant to a coworker's vehicle. The employer [sic] informed the claimant that another coworker had told him that the dashboard of the vehicle was dirty from the claimant putting his feet on the dashboard.

5. The Lieutenant threatened to write up the claimant issuing him discipline. The claimant told the Lieutenant that he did not do it and that he never puts his feet up on the dashboard. He asked the Lieutenant to view the company camera in the vehicles before writing him up. The claimant denies engaging in the behavior he was being accused of.

6. The Lieutenant began to threaten the claimant again with corrective action. The Lieutenant told the claimant he was going to be in trouble and that he should go home. The claimant drove off and stopped face to face with the Lieutenant who told the claimant in front of the other officers that he better back up before something happens.

7. The claimant felt disrespected. He left roll call and went home. While at home, the claimant wrote a report and sent it to Human Resources.

8. On 4/13/23, the claimant was told by both the Chief and Human Resources that the matter was under investigation. The Office Administrator gathered information from the claimant and the Lieutenant. She did not speak to any other employees who witnessed the situation. The Office Administrator gave the information she obtained to upper management.

9. The claimant was off the next day on 4/14/23. The claimant reached out to the employer again leaving a message asking what his employment status was while under investigation. The employer never got back to the claimant.

10. The claimant felt very uncomfortable when he was approached by the Lieutenant because he was very aggressive towards the claimant.

11. On 4/17/23, the claimant submitted his resignation because he feared he was going to be terminated for an incident he did not do.

12. After submitting his resignation, Human Resources sent the claimant an email stating that he was not under investigation for the dashboard incident but that

his walking off the job the prior week was being investigated. The claimant was offered work in another location in this email he received after he had already resigned.

13. The claimant decided to resign because he feared being discharged.

Credibility Assessment:

Although the employer witnesses contended that the claimant was not threatened by the Lieutenant but was instead being insubordinate and refused other work, the claimant's testimony regarding the events that led to his separation is deemed more credible since both employer witnesses were not present to witness the incident that led to the claimant's actual separation.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 12 that states that the employer offered the claimant work at another location only after he had resigned, as this is unsupported by the record.[1] 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 is eligible for benefits.

Because the claimant resigned from his employment, we analyze his eligibility for benefits pursuant to 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. . . .

The express language of these provisions assigns the burden of proof to the claimant.

[1] In an email from the claimant to the employer's Human Resources Department dated April 14, 2023, included as part of Exhibit # 7, the claimant confirms that the employer transferred him to a new location on April 13, 2024, which was four days before the claimant submitted his resignation on April 17, 2023. 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).

After remand, the review examiner found that the claimant quit his employment on April 17, 2023, because he feared that he would be discharged for an incident on April 12, 2023, where he was involved in a verbal altercation with his supervisor, a lieutenant. Consolidated Findings ## 3–7, 11, and 13. The Supreme Judicial Court has held that, if employees leave employment under the reasonable belief that they are about to be fired, their leaving cannot fairly be regarded as voluntary within the meaning of G.L. c. 151A, § 25(e)(1). Malone-Campagna v. Dir. of Division of Employment Security, 391 Mass. 399, 401–402 (1984), *citing* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597–598 (1981).

The claimant testified during the initial hearing that he had been fired from prior employment after being told he was being investigated, and he believed the same would happen here.[2] The claimant's experience at a different job where an investigation led to his discharge does not constitute evidence of imminent discharge in the instant case.

Here, the record indicates that the employer wanted to maintain his employment. Upon learning of the claimant's altercation with the lieutenant on April 12th, the employer immediately offered the claimant the opportunity to work at a different location where he would not have to work with the lieutenant. *See* Exhibit 7.

Moreover, at the time the claimant resigned on April 17th, the employer had not yet completed its investigation into the April 12th incident or given the claimant any indication that it would discharge him. Consolidated Findings ## 8 and 12.

Based on the above, we cannot conclude that the claimant reasonably believed that he was about to be fired for the incident with the lieutenant on April 12th.

We next consider whether the claimant had urgent, compelling, and necessitous reasons or good cause attributable to the employer to resign. The claimant has not asserted that he left employment due to personal matters constituting an urgent, compelling, and necessitous reason, as meant under G.L. c. 151A, § 25(e). Therefore, we only consider whether the claimant quit for good cause attributable to the employer.

In determining whether there was 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). Here, on April 13, 2023, the employer notified the claimant that it would investigate the incident with the lieutenant on April 12th. Consolidated Finding # 8. The employer also offered the claimant the opportunity to work at a different location, presumably to spare the claimant from having to interact with the lieutenant given their verbal altercation. In our view, the employer's decision to investigate the April 12th incident and keep the claimant and the lieutenant separated during the investigation was reasonable and appropriate. Thus, the claimant has not established that the employer's conduct constituted good cause attributable to the employer to resign.

[2] This portion of the claimant's testimony is also part of the unchallenged evidence in the record.

We, therefore, conclude as a matter of law that the claimant failed to show that he resigned for good cause attributable to the employer or under a reasonable belief that he was about to be discharged. He is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending April 22, 2023, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.



BOSTON, MASSACHUSETTS
DATE OF DECISION - July 29, 2024

Charlene A. Stawicki, Esq.
Member



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.

SVL/rh