

The claimant quit her employment because the employer mistakenly omitted a portion of the claimant's earnings from her paycheck. The employer assured the claimant it would rectify its mistake on the next business day. Her resignation before the employer had the opportunity to correct its mistake show that she did not take reasonable steps to preserve her employment. Held the claimant is ineligible for benefits pursuant G.L. c. 151A, § 25(e)(1).

**Board of Review
100 Cambridge Street, Suite 400
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: 0080 6124 83

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 April 21, 2023. She re-opened a claim for unemployment benefits with the DUA, which was approved in a determination issued on July 20, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on August 25, 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 testimony from the claimant, as she was unable to connect to the initial hearing due to technical issues beyond her control. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his 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 quit her position without good cause attributable to the employer or for urgent, compelling, and necessitous reasons, because she resigned over a mistake on her paycheck and she did not give the employer the opportunity to fix it, is supported by substantial and credible evidence and is free from error of law.

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 a school bus driver for the employer, a bus company, from April 3, 2023, until April 21, 2023.
2. The claimant was hired to work 20 hours per week. The employer agreed to pay the claimant for 25 hours per week.
3. The claimant earned \$22.50 per hour.
4. The claimant's supervisor was the dispatcher.
5. On an unknown date, the claimant heard from an unknown source that the city paid the employer \$24.50 per hour for its bus drivers. The claimant was upset that she was not receiving the full amount paid by the city.
6. On an unknown date, while at the employer's office, the claimant asked an office employee for the key to use the office bathroom. The office employee gave the claimant the key but told her she would need to use a different bathroom in the future. The claimant was upset but did not bring this issue to the employer's attention.
7. On approximately April 14, 2023, the claimant was assigned to work a charter route in addition to her school bus route. The claimant was upset that the employer had not given her advance notice of the charter route. The claimant did not tell the employer that she was upset. The claimant accepted the charter route.
8. On April 14, 2023, the employer issued the claimant her first paycheck for the pay period ending April 8, 2023. The employer paid the claimant for her actual hours worked but did not include the additional 5 hours by mistake.
9. The claimant told the vice president (the VP) about the error. The VP told the claimant that she would correct the mistake on the next business day. The claimant asked the VP about her pay rate. The VP told the claimant she would look into it.
10. On April 17, 2023, the claimant gave notice to the employer that she was quitting effective April 21, 2023, because she had not been paid correctly.
11. On April 18, 2023, the employer issued the claimant a check for the missing 5 hours from the previous pay period.
12. On April 21, 2023, the claimant worked her last day for the employer.
13. The claimant was not at risk of being fired.
14. The employer had ongoing work available for the claimant.

15. The claimant did not take any other steps to preserve her employment.

16. On an unknown date, the claimant returned to work for her previous employer.

Credibility Assessment:

In the initial hearing, the employer provided detailed testimony concerning the dates the claimant worked, the claimant's rate of pay, the agreement to pay the claimant for more than her hours worked, the mistake on the claimant's paycheck, and the date the claimant gave notice. The testimony was consistent with the employer's pre-hearing questionnaires.

In the remand hearing, the claimant was unable to provide detailed testimony. The claimant did not know the dates she had worked for the employer. The claimant testified that she was never told her rate of pay. However, the claimant contended that she had been paid incorrectly on her first paycheck. The claimant could not explain how she had determined that she been paid incorrectly if she did not know her rate of pay. The claimant's contention that the city paid a higher rate to the employer is not relevant to the rate of pay the claimant agreed to work for. The claimant did admit that the employer corrected her first paycheck before the second paycheck.

The claimant could not remember when she gave notice to the employer. However, the claimant's testimony indicated that she gave notice at the beginning of her last week of employment. During the remand hearing, the claimant referred to paychecks not in evidence dated April 14 and April 21. The claimant's final paycheck being April 21, 2023, is consistent with the employer's testimony, which suggests that the claimant did give notice on April 17, 2023, as testified to by the employer.

The claimant contended at the remand hearing that she had additionally quit due to being scheduled the charter route without notice and due to being denied access to the office bathroom. The claimant had not mentioned either issue in pre-hearing documents. The claimant could not remember when either incident occurred but admitted that she did not raise either issue with the employer prior to quitting.

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 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. As discussed more fully below, we agree with the review examiner's conclusion that the claimant is not entitled to benefits.

As the claimant resigned her position with the instant employer, her eligibility for benefits is properly analyzed under G.L. c. 151A, §§ 25(e) and (e)(1), which provide, 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 the above provisions, it is the claimant's burden to establish that she left her job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

The claimant resigned her position because the employer had made an error on her first paycheck. Consolidated Findings ## 8 and 10. While the claimant testified on remand that certain other factors contributed to her decision to resign, it is clear from the review examiner's credibility assessment and Consolidated Finding # 10 that he rejected her contentions in this regard as not credible. *See* Consolidated Findings ## 6 and 7. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). As the claimant had not previously mentioned these other issues and was unable to provide any details about either incident at the remand hearing, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

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). Therefore, we consider whether the employer's conduct in failing to pay the claimant an additional five hours of earnings created good cause to resign.

In this case, the employer mistakenly omitted an additional five hours of earnings from the claimant's paycheck for the pay period ending April 8, 2023. Consolidated Finding # 8. Certainly, the claimant is entitled to her pay for all hours worked. But, even if the employer's mistake was a violation of the Massachusetts Wage Act, a claimant is not eligible for unemployment benefits unless she shows that she "had taken such 'reasonable means to preserve [her] employment' as would indicate the claimant's 'desire and willingness to continue [her] employment.'" Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting Raytheon Co. v. Dir. of Division of Employment Security*, 364 Mass. 593, 597–98 (1974); Boyer v. Dir. of Department of Unemployment Assistance, No. 16-P-555, 2017 WL 657650 (Mass. App. Ct. Feb. 17, 2017), *summary decision pursuant to rule 1:28, affirming Board of Review Decision 0014 5343 84* (Jun. 29, 2015).

When the claimant informed the employer's Vice President of the issue with her April 14th paycheck, the Vice President assured the claimant that she would receive the missing earnings on the next business day. Consolidated Finding # 9. However, the claimant chose to resign before the employer had the opportunity to rectify its mistake. Consolidated Findings ## 10 and 11. As the employer evidenced a clear intent to correct its mistake, and as nothing in the record suggested the employer intended to withhold earnings from the claimant, we conclude that the claimant's actions are insufficient to show that she took reasonable steps to preserve her employment. Further, the claimant's decision to take her concern to the employer's Vice President directly detracts from a conclusion that she had reason to believe any attempts to address the issue with her April 14th paycheck would have been futile.

We, therefore, conclude as a matter of law that the claimant did not show that she quit her employment for good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week of April 16, 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 - March 18, 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.

LSW/rh