

The claimant resigned from her position due to a worsening of anxiety symptoms from ongoing, work-related stress. However, the claimant did not give the employer an opportunity to address her concerns. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because she did not make reasonable efforts to preserve her employment.

**Board of Review
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Issue ID: 0080 6405 71

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 separated from her position with the employer on June 21, 2023. She filed a claim for unemployment benefits with the DUA, effective June 18, 2023, which was approved in a determination issued on August 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 awarded benefits in a decision rendered on October 14, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant left employment for urgent, compelling, and necessitous reasons 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 separated for urgent, compelling, and necessitous reasons due to worsening anxiety symptoms from work stress, 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 employed full-time as the interim executive director with the employer, a nonprofit affordable housing agency that worked with municipalities and the state to facilitate affordable housing units, from December 2017 until 06/21/2023, when she separated.

2. The claimant's direct supervisor was the Chancellor for the Diocese (Chancellor).
3. The employer was affiliated with the diocese of a city in Massachusetts (Diocese).
4. The employer owned property and received funding (loans/grants) from a city in Massachusetts (City), or other lenders, to maintain the property as affordable rental housing.
5. The claimant's duties included ensuring that the employer met all necessary requirements of the partnership program for the funding that it received from the City.
6. For the employer to meet all necessary requirements and to pass an annual audit, the employer was required to obtain annual income reports and the current tenant leases (collectively, "required documents").
7. The claimant was responsible for obtaining the required documents from the third-party affiliated organization (Organization) to submit to the City for the annual audit.
8. In 2019, the claimant began experiencing symptoms of anxiousness, difficulty with completing her thought process, and being unable to cope with issues that she was having at work.
9. The claimant sought medical treatment and was diagnosed with anxiety. The claimant began to be treated with medications and she began seeing a counselor.
10. Beginning in approximately June or July of 2022, the claimant worked on obtaining the required documents from the Organization, including requesting assistance from the Chancellor and the Diocese, with no success.
11. In September 2022, the claimant told the Chancellor that her stress level was extremely high. The Chancellor did not respond to the claimant's comment about her stress level.
12. The claimant did not inform the Chancellor that her mental health and/or anxiety was being impacted by her stress level at work associated with not obtaining the required documents from the Organization.
13. In March or April of 2023, the claimant's counselor and medical doctor advised her to stop working because of her medical condition.
14. The claimant decided to keep working because the employer had a small staff and she felt responsible for everyone.

15. On 05/18/2023, the Chancellor issued a memorandum (05/18/2023 Memo) with what he proposed as a resolution to the employer not obtaining the required documents from the Organization. The proposed resolution was to apply for a waiver of the income verification requirement.
16. Prior to May 2023, the employer had not been successful with obtaining a waiver.
17. The claimant did not think the 05/18/2023 Memo resolved the concerns she was having with the employer being unable to meet the requirements of the City.
18. The claimant did not inform the Chancellor that she was not satisfied with the proposed resolution in the 05/18/2023 Memo because she felt as though nobody was listening to her and it was clear that her anxiety was becoming overwhelming.
19. The claimant believed that the employer would not meet the City's requirements for the annual audit in June 2023 because the employer would not obtain the tenant documents from the Organization.
20. On an unknown date in May 2023, the claimant received a second notice from the City about the employer being in non-compliance with the requirements.
21. The claimant's anxiety became overwhelming. She began to experience heart palpitations, she felt like she could not breath, she felt trapped, and she knew she had to remove herself from the situation with the employer.
22. On 06/16/2023, the claimant sent an email to the Bishop, the Chancellor, and the employer's Chief Legal Officer/General Counsel (General Counsel) resigning from her job effective 06/23/2023.
23. On 06/21/2023, the claimant quit her position with the employer because of the stress and anxiety she experienced as a result of the concerns she had that the employer would not be in compliance with the City's funding requirements.
24. Prior to quitting, the claimant did not request a leave of absence because she did not think it would solve the issues that she was experiencing with her stress level, anxiety, and the concerns she was having with the employer not meeting the City's requirements.
25. The claimant was eligible for a leave of absence at the time that she quit.
26. At the time the claimant quit, her position with the employer was not in jeopardy.
27. At the time the claimant quit, the employer had work available for the claimant.

28. At the time the claimant quit, it was unknown whether the employer had director for affordable housing positions available to transfer 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 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 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 is eligible for benefits.

Because the claimant resigned from her position with the employer, this case is properly analyzed under G.L. c. 151A, § 25(e), 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

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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 foregoing provisions, the claimant has the burden to show that she left employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

In her decision, the review examiner ultimately concluded the claimant quit her employment for urgent, compelling and necessitous reasons. However, given the record before us, we are not convinced that this was the appropriate standard to apply. We, therefore, consider the claimant's eligibility for benefits under both the good cause attributable to the employing unit and urgent, compelling and necessitous provisions of G.L. c. 151A, § 25(e).

We note at the outset that our reading of the record suggests that the claimant's decision to resign stems primarily from her dissatisfaction with how the employer chose to address her work-related concerns regarding the employer's compliance with assorted requirements and perceived lack of support from an affiliate organization. See Findings of Fact ## 10, 17, 19–20, and 23; Exhibit 1. In order to determine whether 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). General and subjective dissatisfaction with working conditions does not provide good cause to leave employment under G.L. c. 151A, § 25(e)(1). Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979).

Although the review examiner made extensive findings of fact, they fail to adequately reflect the extensive testimony provided by the employer's witnesses about the various steps it had taken to address the claimant's concerns. These include: speaking with the organization's CEO as early as July, 2022, meeting with the claimant the following month about the issues, attempting to simultaneously address new issues that frequently arose from the employer's side as well as the organization's side while attempting to address the initial issues raised, the creation of a mediation committee to address all issues, the hiring of outside legal counsel, additional meetings and discussions with the claimant prior to May 2023, as well as the May 18, 2023, memorandum referenced in Finding of Fact # 15.¹ Even though the claimant may have had concerns due to the increased challenges in fulfilling her job duties, there is nothing in the record to suggest that the employer failed to address her concerns.

Although the claimant disagreed with the employer's proposed solution as outlined in the May 18, 2023, memorandum, and, per her testimony, was dissatisfied with it, there is nothing in the record showing that the claimant was substantially hindered from performing her job duties at any time. *See* Finding of Fact # 17. Similarly, while the claimant testified that she believed that she would be engaging in unethical behavior and that her reputation was on the line if she "signed off" on any prospective audit knowing the employer remained noncompliant with various requirements, she acknowledged that no one ever told her to report the employer as being in compliant status when it lacked such designation. There is also no evidence that the employer engaged in unethical behavior, that it acted in disregard of local, state, or federal laws or regulations, or that it acted unreasonably or inappropriately with respect to the claimant at any time. Therefore, the claimant's allegations are insufficient to establish good cause attributable to the employer.

The review examiner determined that the claimant separated for urgent, compelling, and necessitous reasons. Our standard for determining whether a claimant's reasons for 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 (1991). As the findings show that the claimant's mental health was being negatively impacted by her stress levels at work, we might agree with the review examiner's conclusion. *See* Findings of Fact ## 12–13, 21, and 23.

However, to be eligible for benefits, a claimant must also show that she made reasonable efforts to preserve her employment prior to resigning or that such attempts would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). The review examiner concluded that the claimant made reasonable attempts to preserve because she continued to work for some time after medical professionals advised her to stop working, and that further preservation efforts would have been futile, because the claimant believed that taking a leave of absence would not resolve her health issues or concerns about the employer not meeting its

¹ This portion of the employer's testimony, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

requirements. *See* Findings of Fact ## 13–14, 24–25. We do not believe that the review examiner’s analysis went far enough.

The claimant was not required to request a transfer to other work or a leave of absence. *Guarino*, 393 Mass. 89, 94 (1984). The record establishes that, prior to resigning, the claimant did make some effort to preserve by seeking medical care and taking medications to control her condition. *See* Finding of Fact # 9. However, the claimant never disclosed her medical condition to the employer’s human resource department, her supervisor, or anyone else with supervisory or managerial authority. *See* Finding of Fact # 12. Although the claimant may have told her supervisor that her stress level was high in September, 2022, this statement is arguably insufficient to place him on notice that the claimant was dealing with more than mere general anxiety. *See* Finding of Fact # 11. It is undisputed that the claimant never raised issues relating to her stress levels again between September, 2022 and June, 2023. After February, 2023, the claimant did not procure further meetings with the employer or contact anyone from the employer to discuss either her health or work-related concerns regarding the employer’s compliance status and the upcoming audit. Moreover, the claimant never told anyone with the employer that she was dissatisfied with the May 18, 2023, memorandum, or that she was contemplating resignation, until she resigned on June 16, 2023. Given that the employer provided unrefuted testimony about its ongoing efforts to address the claimant’s concerns, and Exhibit 9, the May 18, 2023, memorandum, indicates the same, the record does not suggest that further attempts to preserve would have been futile.

We, therefore, conclude as a matter of law that the claimant is not eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because she failed to make reasonable efforts to preserve her employment.

The review examiner’s decision is reversed. The claimant is denied benefits for the week beginning June 18, 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



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.

JMO/rh