

The claimant resigned because of general dissatisfaction with the employer's ongoing efforts to address its noncompliance with an upcoming annual audit. As there is no indication the claimant would have been professionally or personally impacted by the employer's efforts, or possible noncompliance with the audit, she did not show she resigned for good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0080 6907 89

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 25, 2023, which was approved in a determination issued on August 2, 2023. The employer 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 3, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer 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, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant resigned for good cause attributable to the employer because the employer's refusal to comply with an external audit threatened the claimant's career, 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 worked as a full-time payroll manager for the employer, a nonprofit housing corporation, between May 11, 2018, and June 21, 2023, when she separated.

2. The claimant worked thirty-five (35) hours per week, earning \$62,000.00 annually.
3. The claimant's immediate supervisor was the interim director (supervisor).
4. The instant employer is a ministry of the archdiocese of a Massachusetts town.
5. As a nonprofit organization, the employer is audited every June by the cities, the funders, and lenders. As requirement of the audit, the employer is required to have current leases on all proprieties, as well as the required paperwork, such income verification from its tenants signed and up to date.
6. The claimant's job duties required her to get the required paperwork signed and to ensure that the employer was complying with the requirements of the cities, the funders, and lenders.
7. In June 2022, the claimant requested signed paperwork regarding the current leases and income verification from its affiliate organization (organization A), in preparation for the employer's upcoming 2023 audit.
8. The director of organization A (director) refused to sign the paperwork for several reasons including, that receiving signed income verifications from the tenants would be misrepresentation of the population that lived at the properties. The director had previously signed the paperwork for past audits, and nothing had changed with population that occupied the properties.
9. As a result of the director's refusal to sign and provide the required paperwork, the employer became non-compliant going into the 2023 audit.
10. As a result of the employer being non-complaint [sic] the cities, lenders and funders could call the outstanding mortgages from the employer. This move would have negatively affected the claimant's career since she was responsible for signing off on the non-compliant audit.
11. In August 2022, the claimant met with the archdiocese's vice chancellor for administration (VC) and the Chancellor and Chief Financial Officer of the archdiocese (Chancellor) and informed them about the issues she was having with the director's refusal to sign the required paperwork. During that meeting, it was agreed that the VC and the general counsel (general counsel) would meet with the employer, including the claimant and organization A to facilitate a mediation regarding the outstanding issues between the two companies.
12. As of February 2023, the issues were not resolved, and the director had still not signed and provided the required paperwork to the employer.

13. There were several board meetings between the employer and organization A in February, March, and April 2023. The claimant attended the board meetings.
14. On May 18, 2023, the Chancellor sent a resolution memorandum that was passed at a board meeting, regarding the ongoing issues. The memorandum specified, among other things, that the general counsel would apply for a waiver of the income verification from the city of [A].
15. The claimant received a copy of the memorandum that was sent out by the chancellor.
16. The claimant did not agree with requesting a waiver income verification, since in 2018 the employer had previously applied for one from the city of [A] and the application was denied. The claimant did not believe that the waiver would have been granted.
17. After May 18, 2023, the claimant did not contact the Chancellor with any questions or concerns, since she had already told him in summer of 2022 that asking for waiver would not be effective.
18. The resolutions outlined in the memorandum, including the waiver, would not have been completed or resolved in time for the June 2023 audit, and the employer would still have been non-compliant once the audit began.
19. The claimant feared that her career would be negatively impacted if she knowingly entered a non-complaint audit, and the mortgage notes were eventually called.
20. On June 16, 2023, the claimant decided to quit her job because the required paperwork was outstanding, and the employer was non-compliant going into the audit.
21. On June 16, 2023, the claimant sent an email to the Bishop, the chancellor and the general counsel resigning from her job effective June 23, 2023.
22. The claimant's last day at work was June 21, 2023.
23. The claimant would not have quit her job had the issue of the employer's non-compliance been resolved.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 10 that states that the claimant's career would have been negatively

impacted by signing off on the non-compliant audit, as inconsistent with the evidence of record. 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 entitled to benefits.

As the claimant resigned from her employment, her separation is properly analyzed under 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 . . . [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 terms of this provision place the burden of proof upon the claimant.

The claimant resigned her employment because she believed that the employer was going to be non-compliant for its annual audit and was concerned that its non-compliance might negatively impact her career. Findings of Fact ## 19, 20, and 23. 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 anticipation of the audit created good cause to resign.

To determine if the claimant has carried her burden to show good cause under G.L. c. 151A, § 25(e)(1), we consider whether the claimant's workplace complaint was objectively reasonable. See Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 285–286 (1985) (claimant's belief that she was being harassed was not a reasonable one). Good cause to leave employment may be found where a claimant demonstrates "she was required to perform work clearly antithetical to that for which she was initially employed" or otherwise shows that an employer's decision "subjected her to professional sanction, criminal prosecution, or liability in tort." Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979) (citations omitted). General and subjective dissatisfaction with working conditions or reasonable business decisions does not constitute good cause under G.L. c. 151A, § 25(e)(1). See Id.

There was no dispute that the claimant's job duties included assembling the documentation necessary for the employer's annual audit, nor any question that she had previously performed these duties in anticipation of the audit. Consolidated Findings ## 1, 6, and 16. As such, there is no indication that the employer was forcing the claimant to perform work that was "antithetical to that for which she was initially employed." Sohler, 377 Mass. at 789.

Further, nothing in the record suggested that the employer requested the claimant engage in a course of action that could subject her to legal or professional sanctions. The claimant was not responsible for the employer's non-compliance, as she did not have any supervisory authority over, or indeed any employment relationship with, the director of organization A. See Finding of Fact

8. The employer did not instruct the claimant to overlook any issues with its paperwork, to take any steps to intentionally misrepresent the employer's compliance status in the paperwork, or to make any false affirmations that the information contained in the paperwork was complete and correct. *See* Findings of Fact ## 6, 11, and 13–16. While the claimant may have disagreed with the employer's decision to request a waiver, there was no indication that applying for a waiver was unethical or unlawful. Findings of Fact ## 14 and 16. As the scope of the claimant's responsibilities were limited to aggregating the paperwork the employer needed to submit for the audit, we see no evidence that the employer's decision to request a waiver or submit a non-compliant audit could jeopardize any professional licensure the claimant was required to maintain as a payroll specialist.

Finally, we see no foundation in the record for the claimant's assertion that the employer's chosen course of action would have a substantial negative impact on her career. Both parties agreed that the claimant made a reasonable and timely effort to perform her job duties, informed the employer of the issues with the required paperwork, documented any concerns she had with ongoing issues, and attempted to help the employer resolve this issue before the June, 2023, deadline. Findings of Fact ## 7 and 11. There was no testimony suggesting that the employer attributed the paperwork issues to a defect in the claimant's job performance nor any evidence indicating that the employer's business decisions surrounding the annual audit would negatively affect the perception of the claimant's ability to perform her duties as a payroll director. Absent evidence suggesting the employer's business decisions posed a substantial risk to the claimant's professional or personal well-being, we do not believe that the claimant has shown she resigned for good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

We, therefore, conclude as a matter of law that the claimant's dissatisfaction with the employer's ongoing efforts to comply with the June 2023 audit do not constitute good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). The review examiner's decision is reversed. The claimant is denied benefits for the week of 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 - February 8, 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.

LSW/rh