

The claimant's probationary period was extended and he was told that his job was in jeopardy due to poor work performance. When human resources scheduled another meeting, it also cut off his access to email and its computer network. Held the claimant resigned due to a reasonable belief that he was about to be terminated for poor performance, and, therefore, he was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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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 reverse.

The claimant resigned from his position with the employer on April 26, 2023. He filed a claim for unemployment benefits with the DUA, effective August 6, 2023, which was denied in a determination issued on October 13, 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 November 24, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without showing good cause attributable to the employer and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). 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 claimant's appeal.

The issue before the Board is whether the review examiner's decision to deny benefits is supported by substantial and credible evidence and free from error of law, when it concluded that the claimant's belief that he was being mistreated by the employer was unreasonable and therefore, he did not resign for good cause attributable to the employer.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant worked as an outreach coordinator for the employer, a Massachusetts municipality. The claimant began work for the employer in 2022. He worked Monday through Thursday from 7:45 a.m. to 5 p.m. and earned an annual salary of \$50,000.

2. In late 2022 and early 2023, the claimant requested a psychological examination and began therapy. He was diagnosed with anxiety and depression.
3. The claimant reported some of his psychological issues to his immediate supervisor, the Community Development Director.
4. The claimant's therapist did not advise him to leave the employer.
5. In early January 2023, the claimant participated in community events where critical remarks were made by residents about one of the claimant's coworkers, the Home Director.
6. The Home Director asked the claimant about the remarks, and the claimant reported them to her. The Home Director was upset by the remarks.
7. On a day later in January 202[3], the claimant met with the Department Director. She told him she was dissatisfied with his performance. She told him the employer was continuing his probationary period and that his job was in jeopardy.
8. On two consecutive days later in January, the claimant forgot his ID card and asked the Home Director, who sat near the door, to open it for him.
9. Later in January 2023, the Home Director accused the claimant of sexual harassment. She complained she was suspicious the claimant requested she open the door so that he could watch her walk there and back. Also, in January 2023, another coworker complained about the claimant's use of the word "shyster."
10. On February 7, 2023, the claimant met with the employer's HR director. The HR director told the claimant about his coworkers' complaints. The claimant told the HR director he did not intend to offend his coworkers. The HR director gave the claimant a verbal warning.
11. The Department Director continued to be concerned with the claimant's performance and informed the HR director. In late April 2023, they planned to meet with the claimant to discuss his performance. The HR director informed the employer's IT department that the meeting could result in the claimant's separation.
12. On April 26, 2023, the claimant asked his immediate supervisor, the Community Development Director, if he could use his ID card to go to the men's room. The Community Development Director asked the claimant to get a replacement ID immediately.

13. Just after the interaction with the Community Development Director, the claimant received an invitation to a meeting from the human resources department.
14. After his workday ended, the claimant noticed he could no longer access his email or the employer's computer systems.
15. The claimant was suspicious of the purpose of the HR meeting and the loss of his access to email and computer systems. He thought he was being treated unreasonably by the employer.
16. At approximately 8 p.m., the claimant emailed his resignation to the employer. In his email, he states he is leaving because of the unfair and unreasonable treatment regarding the employee allegations and concerns about his performance.
17. The claimant did not give a notice period.

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. 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 was ineligible for benefits.

There is no dispute that the claimant quit his position. He submitted his resignation on April 26, 2023, with the effective date of his resignation to take effect immediately. *See Findings of Fact ## 12, 16 and 17.* Therefore, we analyze the claimant's separation under G.L. c. 151A, § 25(e)(1), which provides, in relevant 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.

Although Finding of Fact #16 captures what the claimant wrote in his emailed resignation, we think that a fair reading of the full record reveals that he chose to resign, because he believed that he was about to be fired for poor performance.

The review examiner found that, on or about early January, 2023, the claimant was informed by his supervisor, the Home Director, that she was dissatisfied with his work performance, and, because of this, she extended his initial probationary period. She also told the claimant that his job was in jeopardy. *See* Finding of Fact # 7.

On April 26, 2023, after an interaction with the Community Development Director regarding the claimant's failure to have his employer ID card on his person, the claimant received an invitation to meet with human resources. *See* Findings of Fact ## 12 and 13. He also discovered that he could no longer access his email or the employer's computer systems. As a result, he became concerned about the purpose of his meeting with human resources. *See* Findings of Fact ## 14 and 15.

Because he was already on notice that his job was in jeopardy for not meeting the employer's performance expectations and was asked to attend another meeting with human resources, the claimant could reasonably believe that the employer cut off access to his work email and computer system because he was about to be terminated.

The April 26, 2023, communication between the Home Director and HR Director underscores that the employer was still dissatisfied with the claimant's performance. Moreover, the HR Director told the IT department that this next meeting with the claimant could result in the claimant's separation. *See* Finding of Fact # 11. Although this finding does not state the purpose for contacting the IT department, we can reasonably infer it was to cut off the claimant's access to his work email and computer systems. *See* Findings of Fact ## 11 and 14. Common sense dictates that an employer blocks such access only when there is a serious intent to discharge the employee.

The Supreme Judicial Court has held that, if employees leave employment under the reasonable belief that they are about to be discharged, 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). In such a case, the separation is treated as involuntary, and the inquiry focuses on whether, if the impending discharge had occurred, it would have been for a disqualifying reason under G.L. c. 151A, § 25(e)(2).

Here, the record indicates that, if the claimant had been terminated, it would have been for performance-based reasons. Although the findings do not reflect specific details about the employer's concerns relating to the claimant's work performance, the Director of Human Resources testified that the claimant's work performance was their primary concern.¹ We can reasonably infer that, after months of monitoring the claimant's performance, the employer saw little to no improvement in his performance. *See* Findings of Fact ## 7 and 11. Nothing in the record indicates that the claimant deliberately failed to meet the employer's work performance standards. "When a worker is ill equipped for his job . . . any resulting conduct contrary to the employer's interest is unintentional; a related discharge is not the worker's intentional fault, and there is no basis under Section 25(e)(2) for denying benefits." Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979).

¹ 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).

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits is not supported by substantial and credible evidence and constitutes an error of law, because the claimant has shown that he resigned under the reasonable belief that he was going to be imminently discharged for performance-based reasons. He is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 29, 2023, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 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.

DY/rh