

**The claimant is not eligible for benefits pursuant to G.L. c. 151A, § 25(e), where she quit her permanent full-time job to accept temporary, short-term employment.**

**Board of Review  
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**Issue ID: 0080 9352 58**

### 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 resigned from her position with the employer on July 28, 2023. She filed a claim for unemployment benefits with the DUA, effective July 30, 2023, which was denied in a determination issued on October 18, 2023. 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 August 1, 2024. 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 remanded the case to the review examiner to give the employer an opportunity to testify and present other evidence. Both parties attended the remand hearings. 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 her employment for good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant left her employment for a temporary position.

### 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 full-time preschool teacher for the instant employer, a school, between 4/11/2022 and 7/28/2023, when she separated.

2. The claimant's supervisor was the former director (director A) and then the current director (director B). Director B's employment as a director started on 6/21/2023. The claimant's upper-level manager was the owner.
3. The claimant's scheduled hours were forty (40) hours per week between 6:45 a.m. and 3:15 p.m. Each pay period covered two (2) weeks.
4. The claimant earned regular pay for fewer than eighty (80) hours per pay period in almost every week she was employed. The claimant worked eighty (80) hours earning regular pay for the pay period covered by check date 10/14/2022.
5. For the pay period covered by check date 1/20/2023, the claimant worked 59.33 hours at regular pay and was paid 7.5 hours of holiday pay, for a total of 66.83 hours for the pay period. During the week of 1/16/2023 to 1/20/2023, the claimant worked fewer than forty (40) hours.
6. For the pay period covered by check date 3/3/2023, the claimant worked 72.90 hours at regular pay and was paid 7.5 hours of holiday pay, for a total of 80.40 hours for the pay period.
7. For the pay period covered by check date 3/31/2023, the claimant worked 74 hours at regular pay and was paid 7.5 hours of vacation pay, for a total of 81.50 hours for the pay period. During the week of 3/13/2024 to 3/17/2024, the claimant worked fewer than forty (40) hours.
8. Director A informed the claimant that whatever hours the claimant puts on her timesheet, the claimant will be paid for.
9. In approximately January, 2023, the claimant asked the owner if she worked overtime would she get paid for it. The owner stated, yes, the claimant would be paid for overtime hours if she worked them. The owner told the claimant that her hours were forty (40) hours per week between 6:45 a.m. and 3:15 p.m.
10. With any pay discrepancy, the employee is expected to contact the owner. The owner would notify the director to see what the issue was with the hours and they would work with the payroll company to update or correct the employee's hours, if necessary.
11. The claimant was familiar with the need to contact the owner for pay issues because there were occasions when the claimant needed paper checks instead of direct deposit, and the claimant communicated with the owner about this.
12. At no point did the claimant complain to the owner that she was not being paid overtime hours. The claimant did not provide the owner with any specific dates where the claimant worked overtime and was not paid.

13. The salary band for assistant teachers is \$16 to \$17 per hour based on experience. The salary band for teachers is \$18 to \$19 per hour. The salary band for lead teachers is \$20 to \$21 per hour. The lead teacher role requires a lead teacher qualification.
14. The employer is a small business. Raises are based on employee performance, company performance, and qualification. Evaluations occur one (1) year after hire.
15. Upon hire, the claimant's pay rate was \$19.00 per hour. The owner did not promise the claimant a pay raise to \$21 per hour after six (6) months of employment. The offer letter did not state any language about a raise.
16. During the claimant's employment, the claimant asked the owner about a raise. The owner told the claimant that to earn more than \$19 per hour, the claimant would need to obtain her lead teacher qualification to attain a pay rate in the employer's next salary band.
17. On 4/22/2023, the claimant emailed the owner asking when her raise would be effective and requested a pay increase to \$21 per hour. On 4/24/2023, the owner replied to the claimant's email that the claimant should be working on her "Lead Teacher qualifications" so the claimant can get to the next pay level.
18. The owner informed the claimant she needed to obtain her remaining twelve (12) credit hours and the employer would need to look at her performance prior to any pay increase. The claimant did not obtain her lead teacher qualification.
19. Director B felt as though the claimant was insubordinate. Director B complained to the owner about this in approximately late June, 2023. The claimant complained to the owner that director B was making the claimant feel incompetent and complaining about how director B was speaking to her and the children.
20. The owner knew that director B and the claimant were not getting along. The owner spoke to the claimant and director B separately. The owner was trying to help director B get settled in and manage the claimant. The owner told the claimant to voice concerns directly to director B first and try to resolve any issues herself, because they needed to work together and hear each other out.
21. The owner had director B complete some training regarding her tone, working with staff, and working on her classroom manner with the children.
22. The claimant did not complain to director B about any unpaid overtime worked or her pay rate.

23. On 6/26/2023, the claimant was offered a two (2) week teacher position at a local elementary school to work Monday to Thursday between 7/31/2023 and 8/10/2023.
24. On 7/7/2023, the claimant emailed her resignation to the owner, effective 7/28/2023. The claimant did not cite a reason for leaving in her resignation email.
25. The claimant resigned from employment with the instant employer because of the offer of new employment at the local elementary school.
26. On 7/13/2023 and 9/9/2023, the claimant applied to the employer's postings on indeed.com for preschool/toddler teacher and assistant teacher.
27. On 8/18/2023, the claimant emailed the employer asking if they "found someone for the position yet[.]"
28. On 1/25/2024, the claimant sent text messages to the employer inquiring about her W-2. The claimant asked, "have you guys found a Prek teacher yet? I need to complete hours in a preschool setting...."
29. On 5/1/2024, the claimant sent a text message to the owner stating, "I saw that you posted a job opening on indeed. I'm interested...." On 5/1/2024, the claimant applied to the employer's posting on indeed.com for toddler/preschool teacher.
30. On 8/13/2024, the claimant applied to the employer's posting on indeed.com for full-time lead preschool/toddler teacher with assistant director qualifications/experience.

#### Credibility Assessment:

At the original hearing, the claimant asserted that if she was not offered new employment, she would have resigned from employment with the instant employer for three (3) reasons: not being paid for overtime she worked, not receiving a promised raise, and disliking how director B was speaking to her. The claimant's credibility that she quit for these reasons despite the job offer is significantly undermined by the claimant's multiple applications to return to work for the instant employer. It was undisputed between the parties, and corroborated by documentation in the record, that the claimant reapplied multiple times for positions with the same pay rate of \$19 per hour, the same owner, and the same director (director B).

Regarding the nonpayment of overtime claim, the claimant provided two photographs of time sheets covering two weeks, a printout of highlighted times in and out, and her staff timecard report of daily totals for her days worked. The week of 1/16/2023 to 1/20/2023 contained a holiday for which the claimant was paid and

the claimant's hours worked totaled less than forty (40) hours, and the week of 3/13/2024 to 3/17/2024 contained a day off for with [sic] the claimant was paid vacation time and the claimant's hours worked totaled less than forty (40) hours. The employer provided the employee detail earnings report covering the entirety of the claimant's employment, with the regular pay and paid time off breakdowns in every pay period. The employer's earnings report establishes that the claimant worked eighty (80) hours at regular pay for only one (1) pay period during her employment. For the two (2) pay periods where the claimant's pay exceeded eighty (80) hours (check dates 3/3/2024 and 3/31/2024), one (1) pay period contained a 7.5 hour paid holiday while the other pay period contained a 7.5 hour paid vacation day. It has not been established that the claimant was working more than forty (40) hours in any week. The owner vehemently denied that the claimant brought any complaints to the owner that she was not being paid overtime hours and that the claimant did not provide the owner with any specific dates where the claimant worked overtime and was not paid. Even if the claimant had brought concerns about overtime to the owner's attention in January, 2023 as the claimant alleged, the claimant's resignation did not occur until 7/28/2023, months later. Given this, it is not credible that the claimant quit at the time she did for non-payment of overtime.

Regarding the raise, at the original hearing, the claimant asserted that the owner verbally promised her [a] pay raise from \$19 to \$21 per hour after six (6) months of employment. This assertion is not plausible. The owner testified about the salary bands for the different positions with the lead teacher being the highest and requiring a lead teacher qualification, which the claimant did not have. The employer's testimony is believable that, as a small business, raises are based on a number of factors including employee performance, company performance, qualification, and that evaluations occur after the first year working. There is no evidence in writing of any promised raise. Instead, the owner's email on 4/24/2024 was consistent with the owner's testimony that the claimant should be working on obtaining her lead teacher qualification so that the claimant can get to the next pay level. In totality, it has not been established that the owner promised the claimant a raise as the claimant alleged.

Regarding how director B spoke to the claimant, the evidence in this case demonstrates that the owner addressed the claimant's concerns by talking with the claimant and director B and having director B participate in re-training. The owner and director B both offered detailed, sequestered testimony about the difficulty director B had managing the claimant. The evidence does not establish that this was a constant barrage of harassment; instead, the evidence leads to a reasonable inference that this was a mere personality conflict between the claimant and director B. It has not been established that the conflict between the claimant and director B was so egregious as to constitute a valid workplace complaint. Moreover, the claimant's multiple applications to return to work for the instant employer where director B remained employed detracts from her claim that she quit due to how director B spoke to her.

#### 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. 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. However, as discussed more fully below, we reject the review examiner's original legal conclusion that the claimant is eligible for benefits.

Although the claimant originally asserted several reasons for quitting her job, including failure to pay overtime, withholding a promised raise, and mistreatment by her direction, the review examiner ultimately rejected them as not credible. Instead after remand, the review examiner found that the claimant quit because she had obtained a job with a different employer. *See Consolidated Finding # 25.*

Inasmuch as the claimant resigned to accept another position, this case is properly analyzed pursuant to the following provision under G.L. c. 151A, § 25(e), which states, in pertinent part, as follows:

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

The consolidated findings provide that the claimant quit her full-time position with the employer to accept new employment, which was for a limited time, scheduled from July 31, 2023, until August 10, 2023. Consolidated Findings ## 1 and 23–25. Because the new job was never intended to be permanent, the claimant does not qualify for benefits under this statutory provision.

We, therefore, conclude as a matter of law that the claimant did not leave employment in good faith to accept new employment on a permanent, full-time basis pursuant to G.L. c. 151A, § 25(e), when she quit her permanent full-time position with the employer to accept a temporary job.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning July 30, 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 7, 2025**



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](http://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