The claimant quit her employment when the employer tried to give her a warning for poor performance. The employer acted reasonably in issuing the warning, as the claimant was not following her supervisor's directions. Further, even if the warning had been unreasonable, the claimant did not take any steps to preserve her employment or show that such efforts would have been futile. The claimant is ineligible for benefits pursuant to 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: 0081 1908 24

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 resigned from her position with the employer on July 13, 2023. She filed a claim for unemployment benefits with the DUA, effective September 24, 2023, which was approved in a determination issued on October 24, 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 November 16, 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 give the claimant an opportunity to testify and present other evidence. Both parties attended the two 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 voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that the claimant quit her employment when her supervisor attempted to give her a written warning for performance issues.

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 full-time as a Customer Account Specialist for the employer, a manufacturer, for a short time from 6/26/23 through 7/13/23.

2. The employer has a 90-day probationary period for new employees.

3. Employees who struggle during their probationary period are offered additional training.

4. In early July, 2023, the claimant's supervisor met with the claimant and her trainers to review the specific training outline. It was explained the training was mapped out to ensure the most efficient and thorough training possible. For instance, details about pricing were not taught until a later time while other topics were covered early in the training process.

5. The claimant and her supervisor got along fine during her employment.

6. The claimant had not received any disciplinary action prior to 7/13/23.

7. On 7/13/23, the supervisor called the claimant into his office because she was underperforming. The supervisor intended to give the claimant a written warning so that she could course correct and potentially improve and stay on board.

8. Underperforming employees typically receive a written warning that explains areas that needed improvement.

9. While the claimant's supervisor was explaining that he felt she was not following his directions or the direction of the trainers, the claimant stood up and left his office.

10. The claimant walked out of the supervisor's office because she didn't want it to get hostile like she had experienced with a previous employer.

11. The claimant's supervisor had not had a chance to give the claimant the warning before she left his office.

12. The claimant's supervisor did not raise his voice in the meeting.

13. The claimant left the supervisor's office within 2–3 minutes from the start of the meeting.

14. The claimant walked to her desk and retrieved her personal items.

15. The claimant walked by her supervisor and flipped her middle finger at him.

16. The claimant walked to the Human Resource Business Partner's office and handed him her company badge and said she was leaving.

17. The Human Resource Business Partner asked her why she was leaving.

18. The claimant told him to speak with her supervisor about it.

19. The claimant quit her job for personal reasons.

20. The claimant did not speak with the Human Resource Business Partner about any concerns she may have had prior to resigning.

21. The claimant was not told that she would be fired if she didn't quit her job.

22. Ongoing work was available to the claimant at the time she quit her job.

Credibility Assessment:

The claimant's supervisor provided the most credible testimony at the hearing. He gave specific information about the 7/13/23 meeting, where he intended to present the claimant with a written warning for performance issues when she abruptly stood up and left his office, retrieved her personal items from her desk, flipped him off, and quit her job. When the claimant testified, she could not remember specific details such as when the meeting occurred and gave vague answers indicating her supervisor just told her it was not "working out". She had confirmed the supervisor did not raise his voice, and that she had got along fine with him during her employment before the 7/13/23 meeting. The claimant had no reason to believe she was being terminated or that the meeting would become hostile. The evidence showed she chose to quit her job rather than discuss reasonable feedback from her supervisor and try to improve her performance. Prior to resigning, the claimant took no steps to attempt to preserve her employment.

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. As discussed below, we further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

Because the claimant resigned from her employer, this case is properly analyzed pursuant to 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.

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.

Although the claimant did not specifically state that she quit, she testified that she turned in her badge and left as a result of a meeting with her supervisor where she was presented with issues regarding her work performance. *See* Consolidated Findings ## 9, 10, and 11. We agree with the review examiner that she quit. *See* Consolidated Finding # 19. The claimant did not allege that she left due to an urgent, compelling, and necessitous reason. Therefore, we consider whether the claimant's interaction with her supervisor during the above meeting provided the claimant with good cause attributable to the employer to leave her employment.

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).

We note at the outset of our analysis that, in rendering her consolidated findings, the review examiner provided a detailed credibility determination. 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). Based upon the record before us, we see no reason to disturb this credibility assessment.

On the basis of her credibility assessment the review examiner found that, on July 13, 2023, the employer called the claimant into a meeting to give her a written warning related to her performance, as the supervisor believed that the claimant was not following her trainers' instructions. *See* Consolidated Findings ## 7 and 9. The purpose of the warning was to help the claimant understand the areas in which the supervisor believed she was deficient, to help her improve her performance, and to remain employed. *See* Consolidated Findings ## 7–8.

However, the supervisor did not have the opportunity to fully explain the situation to the claimant or present the warning to her, because the claimant stood up and left the supervisor's office within two to three minutes of the start of the meeting. *See* Consolidated Findings ## 9, 11, and 13. The claimant proceeded to gather her personal belongings at her desk before passing by her supervisor's office and giving him the middle finger. *See* Consolidated Findings ## 14–15. Lastly, the claimant went to the human resources office to return her badge, and she did not give an explanation as to why she was quitting. *See* Consolidated Findings ## 16–19.

The employer has a reasonable interest in making sure that its employees follow all directions pertaining to their work tasks, and the claimant here was not meeting these performance standards. Thus, the claimant has not established that it was unreasonable for the employer to issue a warning

to her in an attempt to improve her performance. On the record before us, we agree that the claimant has not shown good cause attributable to the employer to resign.

Even assuming, *arguendo*, that the employer had acted unreasonably in issuing the warning to the claimant, the claimant would not be 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).

The claimant here did not take any steps to preserve her employment, as she quit and left the employer's premises without any explanation to her supervisor or the employer's Human Resources Business Partner. Even when the Human Resources Business Partner (Business Partner) gave her the opportunity to share her concerns by asking why she was leaving, the claimant chose not to discuss the situation and instead told the Business Partner to ask her supervisor about it. *See* Consolidated Findings ## 17–18, and 20.

During the hearing, the claimant mentioned that, in prior employment with a different employer, when her manager, who was not a good man, discharged her, she yelled back that she was quitting, and she did not want to experience that type of situation again.[1] *See* Consolidated Finding # 10. Thus, she decided to leave the instant employer quietly to avoid an altercation or a situation where their voices could be raised.

While it is understandable that the claimant wanted to avoid an altercation with her supervisor, she has not shown that such a situation would have resulted here if she had stayed and discussed the employer's concerns and shared any concerns that she may have had in an attempt to continue her employment. In fact, the record indicates that the claimant and her supervisor had gotten along during her employment, her supervisor did not raise his voice during the July 13th meeting, and the claimant was being given the chance to improve her performance, so there was every indication that the situation could have been resolved and conflict avoided had the claimant made an effort. *See* Consolidated Findings ## 5, 7, and 12.

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 within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending July 15, 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.

[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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 30, 2024

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SVL/rh