Board rejected the review examiner's finding that the employer's Program Director spread false rumors about the claimant, because the finding was based upon unreliable hearsay. Held the claimant's resignation due to such rumors did not constitute good cause attributable to the employer to leave. Further, lack of an existing relationship with HR personnel was not a reasonable basis to avoid seeking their assistance, particularly over a problem that the claimant deemed serious enough to leave her job. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0082 0350 21

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 December 14, 2023. She filed a claim for unemployment benefits with the DUA, effective January 21, 2024, which was denied in a determination issued on February 15, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on April 25, 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, she 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. Only the employer 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 was eligible for benefits because false rumors about her that had circulated throughout the workplace constituted good cause attributable to the employer to resign, 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 had multiple periods of employment with the employer. Her most recent start date was 6/30/22. Her job title was Direct Support Professional.

2. The employer administers group home programs for disabled individuals.

3. The claimant was promoted to Program Manager on 7/25/22.

4. Program Managers are responsible for safeguarding disabled individuals' funds and providing the employer's business office with receipts and reconciliations of these funds.

5. The claimant's supervisor was the Program Director.

6. The claimant was approved for PFML effective 9/22/23 to care for a family member.

7. Another family member sustained severe injuries involving a train on 11/2/23. PFML to care for family members ended 12/17/23.

8. Two Direct Support Professionals who worked with the claimant told her in November 2023 that the Program Director spoke about her to other employees while she was on leave.

9. The Direct Support Professionals told the claimant that the Program Director said the claimant was controlling the thermostat at one of the residences while on her leave of absence and making the temperature unbearable, that she stole money, and that she was lying about her family member being injured by a train so she could go on paid leave.

10. These rumors are untrue.

11. The claimant tried to reach out to the Program Director after receiving the above information from the Direct Support Professionals, but she could not reach the Program Director.

12. The employer's Assistant Executive Director reported to the police and DPPC that funds for an individual living at the [sic] one of the claimant's programs were mishandled. The report was made in late November or early December 2023.

13. The employer conducted an audit and found that the above disabled individual was missing $12,303.

14. The employer did not tell the claimant about the audit or contacting the police and DPPC about the disabled individual's missing funds.

15. On 12/4/23, the claimant sent a text message to the Program Director saying she would no longer be employed effective 12/14/23.

16. The claimant resigned due to the above rumors being spread by the Program Director.

17. The claimant did not feel comfortable speaking with Human Resources about the rumors. She did not think it mattered if she spoke with Human Resources about the rumors because they had already spread throughout the workplace.

18. The claimant did not feel comfortable returning to work with the Program Director, who spread the rumors.

19. The claimant received no verbal or written warnings prior to her separation from employment.

20. On 12/27/23, local police contacted the claimant and questioned her about the above audit and the employer's suspicion that the claimant was involved in taking money from a disabled individual. She has not been charged with any crimes as of 3/28/24.

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. The portions of Findings of Fact ## 16 and 18 that attribute the spread of rumors to the employer's Program Director are not supported by substantial evidence. 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 eligible for benefits.

Because the claimant resigned from employment, her eligibility for benefits is governed by the following provisions under G.L. c. 151A, § 25(e):

> [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.

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 (1992). Although the findings suggest that the claimant was upset that false rumors about her were circulating, there is nothing in the record to indicate that they created any medical or other pressing circumstances which required her to stop working for the employer.

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). In this case, the review examiner found that the claimant resigned due to false rumors being spread throughout the workplace while she was on a leave of absence. *See* Finding of Fact # 16. According to these rumors, the claimant had allegedly been remotely controlling the thermostat in a residence, had stolen money, and had lied about a family member being injured in order to take her paid leave. *See* Findings of Fact ## 6–10.

Findings of Fact ## 16 and 18 provide that it was the Program Director, the claimant's supervisor, who was spreading the rumors. In attributing the rumors to the Program Director, the review examiner relied upon the claimant's testimony. 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). "The test is whether the finding is supported by "substantial evidence.'" Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" Id. at 627–628, *quoting* New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted). Based upon the record before us, we believe that this portion of the findings is unreasonable in relation to the evidence presented.

The only evidence to support this finding is the claimant's testimony that two Direct Support Professionals who worked with the claimant told her that the Program Director spoke about her. *See* Finding of Fact # 8. This is hearsay evidence. Hearsay is admissible in unemployment hearings, and it can constitute substantial evidence on its own if it contains "indicia of reliability." Covell v. Department of Social Services, 439 Mass. 766, 786 (2003), *quoting* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 530 (1988). Indicia of reliability include, among other things, whether the underlying statements were presented under oath, were detailed and consistent, was made by a person with a motive to lie, and whether they were corroborated by other evidence in the record. Covell, 439 Mass. at 785-786.

Here, neither of the Direct Support Professionals appeared to testify under oath about what they knew, when or how they came to learn of the Program Director's alleged statements, or the context in which they were made. Nor do we have anything from them in writing to assess whether these Direct Support Professionals' statements were detailed or consistent. There is nothing else in the record that corroborates this portion of the claimant's testimony. While it may be true that rumors were circulating, the review examiner relies exclusively on unreliable hearsay evidence to attribute them to the employer's Program Director. In contrast, we have direct testimony given under oath from the employer's Human Resource Specialist, stating that the first time she learned of the

rumors was in January, after the claimant resigned, when the claimant reached out for tax documents.[1]

Without such credible evidence, the only reasonable inference that we can draw from the record is that the claimant quit because of rumors originating from an unknown source that were circulating in the workplace. Although resigning may have been the right personal decision for the claimant, the relevant question for unemployment eligibility is what the employer did or did not do. Because the claimant has not shown that the rumors were attributable to an employer act or failure to act, she has not met her burden under Conlon to prove good cause attributable to the employer to resign.

Even if we were to assume, *arguendo*, that the rumors came from the employer's Program Director, the claimant is still not eligible for benefits because she did not make a reasonable effort to preserve her job before resigning. The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93-94 (1984).

The findings provide that the claimant made one attempt to reach out to the Program Director about what she had heard from the Direct Support Professionals, then did nothing else when she failed to reach her. *See* Finding of Fact # 11. When asked why she did not then reach out to the Human Resources Department (HR), the claimant explained that it was because there were new people coming into HR whom she had never met, and she did not feel comfortable reaching out to them. *See* Finding of Fact # 17.[2] We do not consider the lack of an existing relationship with HR personnel to be a reasonable basis for not seeking their assistance, particularly over a problem that the claimant deemed serious enough to leave her job.

Finding of Fact # 17 also provides that the claimant did not think it would have mattered to go to HR, because the rumors had already spread in the workplace. *See* Finding of Fact # 17. We take this to mean that she assumed that nothing could be done without actually giving the employer an opportunity to consider how it might address her concerns. It does not demonstrate a reasonable effort to preserve her employment or that such efforts would have been futile.

We, therefore, conclude as a matter of law that the claimant left her employment without demonstrating that she did so for good cause attributable to the employer or due to urgent, compelling, and necessitous reasons, as meant under G.L. c. 151A, § 25(e).

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[1] While not explicitly incorporated into the review examiner's findings, this portion of the employer's testimony 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).

[2] This portion of the claimant's testimony is also part of the unchallenged evidence in the record.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning January 21, 2024, 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 24, 2025

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.

AB/rh