Throughout her employment, the claimant was insulted or ignored by her supervisors and regional manager whenever she asked questions or sought feedback on her work. The claimant resigned after senior level staff informed her about an upcoming meeting to discuss her role with the company. The claimant has shown that her leaving was for good cause attributable to the employer, and she resigned under a reasonable belief of imminent discharge for performance. The claimant is eligible for benefits under G.L. c. 151A, § 25(e)(1).

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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 affirm.

The claimant resigned from her position with the employer on January 31, 2024. She filed a claim for unemployment benefits with the DUA, effective January 28, 2024, which was denied in a determination issued on March 26, 2024. 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 April 24, 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 afford the employer an opportunity to testify. Both parties attended the remand hearing. 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 had good cause to resign due to a hostile work environment, is supported by substantial and credible evidence and is free from error of law.

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 controller for the employer, a packaging company, from 11/15/23 through 1/30/24.

2. She has about thirty years of experience in this type of work.

3. The claimant was hired to work full-time, 40 hours per week. The claimant worked mainly onsite each day, but she often worked additional hours remotely from home.

4. The human resource director works onsite, but oversaw a different division than the one where the claimant worked.

5. The onsite human resource director reported to the corporate human resources contact.

6. The claimant was told specifically by the Vice President of Finance and by another Vice President to reach out to the corporate human resources contact with any work issues and not to the on-site human resources director.

7. The claimant did not receive adequate training during her first few weeks with the employer. She was trained by an individual who was being terminated for performance reasons.

8. The claimant was struggling to do the job and was not getting the help and support necessary to be successful, so she ended up working 60-80 hours every week.

9. When she asked questions or sent drafts for feedback from her supervisor and from the regional manager, she was often ignored or insulted.

10. For instance, when she asked her initial supervisor for help, she was told if she couldn't figure it out, she was too stupid to work there. She was told her job was "accounting 101."

11. She was also told if she could not figure something out by herself, she was an idiot.

12. Her supervisor told her that she "clearly did not know what she was doing."

13. The claimant was made to feel incompetent and suffered from severe stress and anxiety.

14. In or around December 2023, the claimant emailed the corporate human resource contact about her concerns.

15. The claimant had a Zoom call with the corporate human resources contact and was told things would get better.

16. The claimant's initial supervisor went out on maternity leave in or around December 2023.

17. The acting supervisor tried to help the claimant, but he didn't have a good grasp of the duties of the position, so she still had to work long hours each week to try to figure out how to do the job competently.

18. For instance, in early January 2024, the claimant was corresponding with the acting supervisor at 11:00 p.m. at night, while working a 16-hour day.

19. When she mentioned her concerns about the long hours to her supervisor, she was told sometimes employees had to just put in extra time.

20. The employer scheduled a meeting for 1/30/24 to discuss inventory.

21. The claimant had prepared a detailed report for the meeting and sent a draft to the regional manager for feedback, but she never received a response.

22. The claimant asked to meet to prepare for the 1/30/24 meeting and to review her report, but that request was also ignored.

23. The claimant suffered from anxiety and stomach pain due to the issues she had at work. She saw her physician and was prescribed medication because the doctor felt she may be getting an ulcer.

24. The claimant believed the stress from work was causing her increased anxiety and led to her stomach issues/ulcer.

25. During the meeting on 1/30/24, the regional manager presented his own report and ignored the claimant's report completely.

26. The Vice Presidents in the meeting told the claimant that she should be handling the report but did not allow her to talk in the meeting. She felt useless and incompetent.

27. The Vice President asked the claimant to log out of the Zoom meeting and later told her they would be meeting to discuss her role in the company on 2/8/24.

28. When she got the message about the meeting, the claimant believed she was going to be fired.

29. During her employment, the claimant had asked for help approximately 20-30 times in different situations. She was either ignored, insulted, or told she should figure it out on her own each time.

30. On 1/31/24, the claimant emailed the corporate human resource contact about her concerns about her job, including being ignored and being made to feel as if she was incompetent.

31. The corporate human resource contact did not reply.

32. Hours later, the claimant sent an email resigning from her job, effectively immediately. The claimant quit her job due to the negative, stressful, and hostile work environment where she felt completely unsupported and because her job was affecting her health. She also quit because she believed she was going to be fired during the 2/8/24 scheduled meeting.

33. The claimant believed she would be fired because the company had been laying off many other individuals who worked for the company at the time and because she felt the regional manager believed she was incompetent.

34. The claimant quit her job effective immediately because she knew the reports for the month's end would be coming up and she could not work another 16-hour day as she had the previous month to try to get the work completed without the training/assistance she needed.

35. The onsite human resources director did not believe the claimant was part of the reduction in force, but did not know if she was going to be fired in the 2/8/24 meeting for other reasons.

Credibility Assessment:

The claimant's testimony about her reasons for resigning from her position was very credible. She provided sincere and detailed responses to all questions asked throughout both hearings that supported the fact she was insulted, made to feel incompetent, and felt unsupported in her position to such an extent that she was forced to leave her job. Her belief that she would be terminated in the 2/8/24 meeting is also reasonable considering she had been insulted, ignored, and made to feel incompetent in a work environment undergoing a reduction in force. Prior to resigning, she attempted to preserve her job by discussing her concerns with the corporate human resources contact in December and then again right before she resigned. Her concerns went unaddressed.

The employer witness had minimal contact with the claimant and had no firsthand knowledge about the events that occurred between her and her supervisors/managers. Although the witness was the on-site human resource manager, the claimant had been specifically directed to only deal with the corporate human resource director who worked offsite.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner's conclusion that the claimant is eligible to receive benefits.

Because the claimant resigned from her employment, we analyze her eligibility for benefits pursuant to following provisions under G.L. c. 151A, § 25(e)(1), which provide, 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 language of these provisions places the burden of proof on the claimant.

Following the initial hearing, at which only the claimant offered evidence, the review examiner concluded that the claimant had carried her burden. After our review of the entire record, including the testimony from both hearings and the consolidated findings of fact, we agree that the claimant has shown that she quit her job for good cause attributable to 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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). In this case, the claimant quit her job due to the ongoing behavior exhibited by her supervisors and an upper-level regional manager. It is her burden to show that the employer's behavior was unreasonable so as to create good cause for her to quit her job.

During both the initial and remand hearings, the claimant described in detail how she was ignored, insulted, and made to feel inferior and incompetent throughout her employment. Specifically, the claimant did not receive adequate training, help or support to be successful, as she was trained by an individual whom the employer was terminating for performance reasons. *See* Consolidated Findings ## 7–8. When the claimant asked questions or sought feedback on her work, she was often ignored or insulted. Consolidated Findings ## 9-10, 21–22, and 29. The claimant was also told that, if she could not figure something out, she was an idiot. Consolidated Finding # 11. One of her supervisors told her that she "clearly did not know what she was doing." Consolidated Finding # 12. The employer provided no testimony or documentary evidence that refuted the claimant's statements. We cannot see how such a pattern of behavior exhibited by the supervisor and regional manager and directed towards the claimant can be considered reasonable, as name-calling and routinely ignoring requests for assistance are devoid of any constructive purpose in a

work environment. Based on this record, we believe that the claimant has shown that the employer's behavior was unreasonable. It created good cause for her to quit her job.

However, our analysis does not end here. 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 he 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 consolidated findings show that the claimant did try to remedy the problem. The claimant consistently asked questions, sought feedback from her supervisor and regional manager, and asked to meet with them, but was either ignored or insulted. *See* Consolidated Findings ## 9, 21–22, and 29. In December, 2023, one month into her employment, the claimant emailed her corporate human resources contact about her concerns and was only told that things would get better. Consolidated Findings ## 14–15. Hours before she resigned, the claimant emailed her corporate human resources contact about her concerns a second time but received no response. Consolidated Findings ## 30–31. We are satisfied that, under the circumstances, the claimant made a reasonable attempt to preserve her employment. Given the employer's ongoing inaction, further efforts to keep her job would have been futile.

The review examiner also found that the claimant quit because she believed that she was going to be fired during a meeting that the employer had scheduled for February 8, 2024. *See* Consolidated Finding # 32. It is well-settled that an employee who resigns under a reasonable belief that they are facing imminent discharge is not disqualified from receiving unemployment benefits merely because the separation was technically a resignation and not a firing. *See* Malone-Campagna v. Dir. of Division of Employment Security, 391 Mass. 399 (1984). 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).[1] For example, impending separations based on imminent layoff or poor job performance are not disqualifying reasons under G.L c. 151A, § 25(e)(2), and an employee who quits in reasonable anticipation of such would be eligible for benefits. *See* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597–599 (1981); Scannevin v. Dir. of Division of Employment Security, 396 Mass. 1010, 1011 (1986) (rescript opinion).

Here, the review examiner found that, despite asking to meet to prepare and review her report for an inventory meeting scheduled for January 30, 2024, the claimant's request was ignored, and the regional manager proceeded to present his own report, ignoring the claimant's report completely, during that meeting. Consolidated Findings ## 21, 22, and 25. Afterward, the vice presidents in the meeting told the claimant that she should be handling the report and did not allow her to talk. Consolidated Finding # 26. The claimant was then asked to log out of the Zoom meeting and was later told that the vice presidents would be meeting to discuss her role in the company on February 8, 2024. Consolidated Finding # 27. Upon receiving this message about the February 8, 2024, meeting, the claimant believed that she was going to be fired. Consolidated Finding #28. For this reason, and because of the negative work environment she experienced, the claimant decided to resign and separate from her employment as of January 31, 2024.

[1] Although the inquiry touches on G.L. c. 151A, § 25(e)(2), because the claimant quit, she still has the burden to show that her separation was imminent.

The consolidated findings show that the claimant reasonably believed that she was going to soon be terminated. The person training her had been discharged her for poor performance, and the claimant felt that the regional manager believed that she was incompetent. *See* Consolidated Findings ## 7 and 33. Throughout the claimant's employment, the employer laid off many other individuals who worked for the organization. Consolidated Finding # 33. Although the employer's witness, the onsite human resource director, did not believe that the claimant was part of its reduction in force, she also did not know if the claimant was going to be fired in the February 8, 2024, meeting for other reasons. Under these circumstances, we think that the claimant could reasonably have believed that she was about to be terminated.

The record indicates that, if the claimant had been terminated, it would have been for a performance-based reason. An inability to do the job to the employer's standards, despite her best efforts, is not a disqualifying circumstance under G.L. c. 151A, § 25(e)(2). *See* Garfield v. Dir. of Division of Employment Security, 377 Mass. 94, 97 (1979).

We, therefore, conclude as a matter of law that the review examiner's decision to award benefits is supported by substantial and credible evidence, because the claimant has shown that she resigned for good cause attributable to the employer and reasonably believed that she was going to be imminently discharged for non-disqualifying, performance-based reasons. She remains eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning January 28, 2024, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 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.

JMO/rh