The Board rejected as unreasonable the review examiner's credibility assessment accepting the claimant's self-serving testimony that the former HR Director had promised her an unconditional $15,000 raise. Although the claimant left because she believed she was entitled to additional compensation, this does not constitute good cause attributable to the employer and she is ineligible for benefits pursuant to § 25(e)(1).

Board of Review
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Issue ID: 0082 8711 37

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 separated from her position with the employer on May 24, 2024. She filed a claim for unemployment benefits with the DUA, effective May 26, 2024, which was denied in a determination issued on July 2, 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 August 6, 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party 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 quit for good cause attributable to the employer because it did not provide her with a promised raise, and that she took reasonable steps to preserve her employment because she reached out to multiple people and waited several months to receive the raise, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. On October 17, 2022, the claimant began working as a full-time senior front office manager for the employer, a hotel. In this position, the employer paid the claimant between $85,000 and $87,000 per year.

2. The claimant was offered the position of director of front office at another of the employer's hotels. The claimant received a letter from the employer's initial director of human resources (the director) offering her the job with an annual salary of $100,000.

3. The claimant was aware of the additional duties and responsibilities that this new position required. The claimant did not initially sign the offer letter because she wanted to get additional remuneration for her work.

4. The claimant had a conversation with the director and asked for her new salary to be $115,000. The director told the claimant that she would get a raise in 6 months. The director did not tell the claimant that the raise was conditional, that in 6 months her salary would be reviewed, or anything of similar import.

5. The claimant then accepted the job of director of front office, effective September 1, 2023, based on the director's promise that she would get a raise in 6 months.

6. Had the director not promised her a raise in 6 months, the claimant would not have accepted this new position, and she would have continued working as a senior front office manager.

7. In her new position, the claimant reported directly to the employer's director of rooms (the DOR).

8. The director stopped working for the employer sometime in late 2023. She was replaced by the new director of human resources (the DHR).

9. Sometime in February 2024, as it was nearly 6 months since she started in her new role, the claimant spoke with the DOR and told him that she was due for a raise. The DOR told the claimant that business was slow, that it was not the best time for a raise, and to wait.

10. Around the end of April 2024, the claimant again spoke with the DOR and inquired about her raise. The DOR told the claimant that he was not the right person to discuss a raise with and that she should speak with someone from the employer's human resources department.

11. On April 25, 2024, the claimant spoke with the DHR. The claimant told the DHR that the director had promised her a raise in 6 months, and asked for her pay to be increased to $120,000. The DHR told the claimant that she would look into it and get back to her.

12. Sometime in early May 2024, the claimant messaged the DHR and asked her if there were any updates regarding her raise. The DHR told the claimant that there were no updates.

13. As a result of the employer failing to provide her with a raise that the director had promised her prior to accepting her new role, the claimant decided to quit her employment.

14. On May 6, 2024, the claimant emailed the DOR and the DHR informing them that she was resigning from her employment effective May 24, 2024.

15. On May 8, 2024, the claimant met with the DOR. The DOR asked the claimant if she would stay if the employer gave her the promised raise. The claimant told the DOR that she would continue working for the employer if she was provided with the raise.

16. On May 9, 2024, the DOR informed the claimant that she was not getting a raise.

17. Had the employer provided the claimant with her promised raise, she would not have quit her employment.

18. The claimant continued working for the employer until May 24, 2024, at which time she quit her employment due to the employer's failure to provide her with a promised raise.

[Credibility Assessment:][1]

Despite not having anything in writing to support her testimony, the claimant directly and specifically explained in detail how the director, at the time, told her that she would be getting a raise in 6 months, something that the claimant relied upon when accepting this position. Although the DHR testified that the promise would have been in writing and conditioned on a review, the DHR was not present during this conversation and the claimant's version of events was clear and consistent. Furthermore, the claimant's version of events is corroborated by the fact that she told the DHR of the director's promise on April 25, 2024. The claimant testified that she "definitely" shared this with her on that day, and although the DHR could not recall this part of the conversation, she did not deny that the claimant told her this. It is therefore concluded that the employer (via the director) made a promise to the claimant regarding her pay, that it did not keep, . . .

Ruling of the Board

[1] We have copied and pasted here the portion of the review examiner's decision, which includes his credibility assessment.

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. We reject the portions of Findings of Fact ## 4, 5, 6, 17, and 18, which state that the director promised the claimant a raise in six months, as discussed below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we reject the review examiner's legal conclusion that the claimant is entitled to benefits.

Because the claimant resigned from her employment, her eligibility for benefits is properly analyzed under the following provisions of G.L. c. 151A, §§ 25(e), which state, 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 upon the claimant.

The claimant testified that she resigned because the employer had not provided her with a previously agreed-upon raise. As the claimant resigned because of a decision made by her employer, we need not consider whether she resigned for urgent, compelling, and necessitous reasons.

When a claimant contends that her 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). Therefore, we consider whether the employer's decision not to give the claimant her requested raise created good cause to resign.

In awarding the claimant benefits, the review examiner accepted as credible the claimant's testimony that the employer's previous human resources director had guaranteed her an unconditional $15,000 raise. 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 cannot accept the review examiner's assessment.

Review examiners are not required to believe self-serving, unsupported evidence, even if it is uncontroverted by other evidence. McDonald v. Dir. of Division of Employment Security, 396 Mass. 468, 470 (1986). They must still assess the reasonableness of the testimony presented. Accepting the claimant's self-serving testimony as credible in this case requires that we assume that the former director of human resources had the unilateral authority to materially alter the terms of the claimant's employment agreement without approval from any other individual at the company. It also requires that we assume that the employer was willing to award the claimant an additional 15% raise without any assessment of her performance in a new role. Such assumptions ignore the employer's evidence.

The review examiner disregarded the DHR's uncontested testimony that such unilateral action by the former HR director would have been contrary to the employer's established business practices, explaining that the employer requires changes in compensation to be documented in writing and contingent upon a performance review.[2] It stands to reason that any agreement materially increasing the financial terms of the claimant's employment would have to be documented, particularly when it was not to be revisited for six months. The employer had already raised the claimant's salary by approximately 15% as part of her promotion. Its requirement that an additional raise be contingent upon a performance review also comports with a common-sense understanding of normal business operations, and it makes sense that it would want to first assess her performance in this new role.

Further, when the claimant spoke to the DHR in April, 2024, she asked for $5,000 more than what she said she had been promised. *See* Findings of Fact ## 4 and 11. This difference detracts directly from the credibility of the claimant's testimony about the alleged promise.

For the reasons articulated above, we reject the review examiner's credibility assessment. The claimant's self-serving testimony is not such evidence as a reasonable mind might accept as adequate to support a conclusion, taking into account the evidence in the record that detracts from its weight.

In the absence of credible evidence indicating that the claimant was promised an unconditional raise, we can reasonably infer that she resigned because she believed that she was entitled to the additional compensation she requested. *See* Findings of Fact ## 2 and 3. We do not question the reasonableness of her belief, and resigning may have been the correct personal decision for the claimant to make. However, it does not amount to good cause attributable to the employer. *See* Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979) (general and subjective dissatisfaction with working conditions does not provide good cause to leave employment under G.L. c. 151A, § 25(e)(1)).

We, therefore, conclude as a matter of law that the review examiner's decision to award benefits is not free from error of law, because the claimant did not show that she separated for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1)

[2] The employer's uncontested testimony in this regard, while not explicitly incorporated into the review examiner's findings, 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).

The review examiner's decision is reversed. The claimant is denied benefits for the week of May 26, 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 - October 28, 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.

LSW/rh