

**The claimant quit his position for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1), where he established that he was treated unreasonably by a new supervisory employee. Given the supervisor's refusal to communicate with the claimant directly about his concerns and a negative performance improvement plan which followed, the record shows that further efforts to preserve his job would have been futile.**

**Board of Review  
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**Issue ID: 0083 0173 56**

### 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 reverse.

The claimant resigned from his position with the employer on November 6, 2023. He filed a claim for unemployment benefits with the DUA, effective June 16, 2024, which was denied in a determination issued on July 13, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on September 12, 2024. 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 enter documentation into the record and afford the parties an opportunity to present additional evidence. Only the claimant 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 failed to establish that he left work for good cause attributable to the employer, 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. In February 2021, the claimant began working as a full-time (40+ hours per week) "buyer" for the employer, a plastic compounds producer.

2. The claimant worked in the employer's Massachusetts office.
3. The claimant's direct supervisor was the employer's procurement manager.
4. In November 2022, the claimant's former supervisor (the former supervisor) was promoted to a new position.
5. In November 2022, the claimant got a new supervisor (the new supervisor) who was based in North Carolina. Most of the new supervisor's interactions with the claimant were virtual. The new supervisor typically visited the Massachusetts office once every two to three months.
6. The claimant and the former supervisor had a "great," "solid," "very professional" working relationship. The former supervisor mentored the claimant, held monthly one-on-one meetings with the claimant, and taught the claimant "a lot."
7. When he supervised the claimant, the former supervisor gave the claimant quarterly performance reviews. Typically, the former supervisor would email the review to the claimant at first, and then set up a meeting with the claimant later to discuss it.
8. Some reviews from the former supervisor indicated that the claimant needed improvement and others indicated that the claimant met most of the expectations. Whenever the claimant received these reviews from the former supervisor, even when they highlighted areas of improvement, he accepted them because he felt that they were "fair" and because the former supervisor offered training and support to help the claimant meet the expectations.
9. When the new supervisor started supervising the claimant, it was around the time when the employer issued annual reviews. The claimant suggested to the new supervisor that because he was new, he should get information about the claimant and his colleagues from the former supervisor.
10. After the claimant asked the new supervisor to consult with the former supervisor regarding the claimant's performance, the new supervisor told the claimant that moving forward, the new supervisor would not communicate to the claimant directly, but would speak to him through one of the claimant's colleagues (hereafter the "proxy supervisor").
11. The new supervisor stated that the proxy supervisor would essentially supervise the claimant moving forward, and that the new supervisor would send assignments to her, and she would then send those assignments to the claimant.
12. The proxy supervisor was a buyer just like the claimant. The claimant had trained the proxy supervisor. The proxy supervisor previously had no

- supervisory power over the claimant, and the two of them basically worked as equal colleagues on the same level.
13. The claimant protested this new supervision arrangement and asked the new supervisor if it was related to his performance. The new supervisor stated that it had nothing to do with his performance.
  14. The other buyer in the Massachusetts office was not required to report to the proxy supervisor. She dealt with the new supervisor directly.
  15. The new supervisor initiated one-on-one meetings with the claimant's colleagues.
  16. The new supervisor never initiated any one-on-one meetings with the claimant.
  17. When the new supervisor visited the Massachusetts office, the claimant would see him visit his colleague's [sic] offices, greet the colleagues, chat with them, and hold meetings with them.
  18. Whenever the new supervisor visited the Massachusetts office, he never entered the claimant's office, never greeted the claimant, and never held a meeting with the claimant.
  19. When the new supervisor visited the Massachusetts office, he invited the claimant's colleagues out for lunch. He did not invite the claimant for these lunches.
  20. "Many times," the claimant initiated contact with the new supervisor. "Many times," the new supervisor never responded to the claimant.
  21. Sometimes, the claimant organized meetings between him and the new supervisor to discuss the claimant's performance. The new supervisor never showed up for these meetings.
  22. The claimant and the new supervisor never discussed the claimant's performance.
  23. Whenever the claimant had job specific challenges, the new supervisor blamed the claimant for these challenges, even when they were out of the claimant's control. For example, the new supervisor reprimanded the claimant when vendors raised their prices, failed to deliver product on time, or when the receiving department failed to give the claimant an accurate update.
  24. On Wednesday, November 1, 2023, the employer's human resources manager (HRM) called the claimant. The HRM told the claimant that, in 30 minutes, there would be a virtual performance review meeting between the claimant, the new supervisor, and the HRM.

25. The new supervisor had never issued the claimant any other performance reviews before this day.
26. On Wednesday, November 1, 2023, the claimant, the new supervisor, and the HRM attended the virtual performance review meeting.
27. During the virtual performance review meeting, the new supervisor indicated that the claimant's performance was not satisfactory, and that because of that unsatisfactory performance, he was being placed under a performance improvement plan (PIP). The new supervisor shared his computer screen, and the claimant was able to see the PIP that was written down.
28. The PIP was what was issued as the claimant's annual review for 2023. The employer did not issue the claimant a separate review.
29. The PIP stated, among other things, that the claimant "exhibited some difficult interactions with inter-department and intra-department colleagues." Specific colleagues who had "difficult interactions" with the claimant were mentioned by name on the PIP.
30. The PIP also stated that the claimant lacked a "sense of urgency", failed to follow specific employer requirements, failed to solve challenges, left the office at times without notifying anyone, etc.
31. After the new supervisor went through the PIP, the claimant stated that he could not accept the PIP because it was not accurate. The claimant stated that he could bring in emails, documents, and other "facts" that would show that the PIP was incorrect. The claimant asked the new supervisor to consider amending the PIP after the claimant sent in the documents challenging the PIP.
32. The new supervisor stated that he would not change the PIP, that the claimant had to accept it as it was, and that he would have to wait for a new review the next year.
33. The claimant stated that he would rather resign than accept that PIP. The supervisor told the claimant that that was the claimant's decision to make.
34. Specifically, the claimant disagreed with the assertion that he had a difficult working relationship with his colleagues. The claimant felt that he had a good working relationship with the specified colleagues. The claimant also disagreed with the assertion that he took time away from work without notifying anyone. The claimant felt that this was a lie because he never left the building even for lunch breaks.
35. Even though the PIP stated that accepting it did not imply that the claimant agreed with it, the claimant refused to sign it because he felt that it was an attack

- on his “integrity”. The claimant felt that it was inappropriate, unethical, and disrespectful of the employer to expect him to sign and accept a document that he felt was based on lies.
36. The claimant asked if he had to make a decision in that meeting. The HRM told the claimant that he could take time to think of a decision, that he could take the PIP home, and bring it back after three days.
  37. The HRM told the claimant that he had to make a decision within a three-day deadline, but she did not mention what the consequences would be if the claimant refused to sign the PIP.
  38. It is unknown if the employer has any policies, rules, or expectations regarding PIPs, or regarding what would happen to employees who refuse to sign PIPs issued to them. It is also unknown if the employer has specific procedures that employees are required to follow whenever they disagree with reviews, evaluations, and PIPs issued to them.
  39. The claimant asked the HRM to email the PIP to him. The HRM emailed the PIP to the claimant after the meeting.
  40. After the claimant received the PIP from the HRM via email, he printed it and shared it with his colleagues.
  41. After the meeting, the claimant contacted the two colleagues mentioned in the PIP who he allegedly did not have a good working relationship with. The colleagues confirmed through email that they did not have any issues with the claimant.
  42. On November 3, 2023, the HRM reached out to the claimant, stating that he should have kept the PIP confidential and not shared it with his colleagues.
  43. The claimant went over his PIP line-by-line and prepared a line-by-line response.
  44. The claimant printed evidence that he believed contradicted the PIP. This included emails and other documents that he felt would prove that the PIP was erroneous, including the emails from the colleagues stating that they did not have a difficult working relationship with the claimant.
  45. On Friday, November 3, 2023, the HRM went into the claimant’s office. The claimant showed the HRM all the documents that he had printed to show that the PIP was wrong. The HRM shook her head and stated that the employer was not going to change the PIP, and that the claimant had to await a new review in the next year.

46. The claimant stated that he would not accept the PIP because he felt that signing it would indicate that he agreed with it. The claimant stated that he felt that the employer was “forcing me out.”
47. The HRM stated that it was all about “perception” and stated that the claimant could either accept the review or choose to resign.
48. After his encounter with the HRM on Friday, November 3, 2023, the claimant decided that he would resign from his position. The claimant drafted a resignation notice that day, but did not hand it over to the employer.
49. The resignation letter did not state the reason for his intended resignation. The claimant was hoping the employer would change their mind. When he drafted the resignation letter, he was hoping he would not have to submit it.
50. On the afternoon of Monday, November 6, 2023, the HRM went into the claimant’s office and asked him if he had made his decision. At that point, the claimant submitted his resignation letter to the HRM.
51. The claimant’s resignation letter had November 17, 2023 as his intended last day.
52. The HRM stated that she would work on a separation agreement and release that would give the claimant four weeks of severance pay.
53. On Monday, November 13, 2023, the HRM went into the claimant’s office and told the claimant that that day would be his last day.
54. The HRM issued the claimant the separation agreement and release. The claimant refused to accept it.
55. The HRM asked the claimant to leave the employer’s premises.
56. The claimant handed over his ID, his laptop, and his keyboard to the HRM. The claimant also gathered all his personal belongings.
57. The claimant had all the documents he had printed to show that the PIP was inaccurate. The claimant gathered all these documents into a folder, intending to take them away with him. The HRM told him that he could not take those documents away with him because they were the employer’s property. There was a disagreement between the claimant and the HRM regarding these documents, with the claimant insisting on taking them with him because he felt they were “proof” that the employer had mistreated him, and the HRM insisting that he could not take them because they were the employer’s property. At that point, the claimant accused the HRM of mistreating him because he was a black person. Ultimately, the claimant left the employer’s premises and did not take the documents away with him.

58. When the claimant separated from the employer, he lost access to emails, accounts, and any other documents that would support his contention that the PIP was inaccurate.

59. Effective November 17, 2023, the claimant quit his job with the employer because he disagreed with the PIP issued to him.

#### Credibility Assessment:

The claimant attended the initial telephone hearing on August 8, 2024, and the virtual remand hearing held on October 17, 2024. The employer did not participate in either of the hearings.

Throughout both hearings, the claimant's testimony about his separation from the employer remained consistent and forthcoming. The employer failed to provide any testimony to dispute the claimant's account. As a result, the review examiner credits the claimant's testimony as credible.

#### 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. However, as discussed more fully below, we disagree with the review examiner's conclusion that the claimant is ineligible for benefits.

The findings indicate that the claimant gave his resignation notice on November 6, 2023, and offered November 17, 2023, as his last day of work. *See Consolidated Findings ## 50–51.* The findings also show that, because the claimant's last day of work was November 13, 2023, the employer chose not to have the claimant work out his entire notice period. *See Consolidated Finding # 53.*

For this reason, we analyze the claimant's eligibility for benefits pursuant to G.L. c. 151A, § 25(e)(2), as of the week beginning November 12, 2023. However, the record shows that he planned to resign from the employer on November 17, 2023. Thus, we analyze the claimant's eligibility for benefits pursuant to G.L. c. 151A, § 25(e)(1), as of the week beginning November 19, 2023, which is the week the claimant's resignation would have taken effect had he been allowed to work out his notice period. *See Board of Review Decision 0002 4012 73 (June 20, 2014).*

First, we address the claimant's involuntary separation from employment on November 13, 2023. The relevant statute, G.L. c. 151A, § 25(e)(2), provides, in relevant 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in willful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence . . . .

“[The] grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee's right to benefits, and the burdens of production and persuasion rest with the employer.” Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

As a threshold matter, the employer must show that the claimant's termination was attributable to some sort of deliberate misconduct or rule violation. On the record before us, there is no evidence that the claimant did anything wrong. The claimant notified the HRM on November 6, 2023, that he was quitting, effective November 17, 2023. Consolidated Findings ## 50–51. In the absence of any evidence to the contrary, we may reasonably infer that the employer chose to end the claimant's employment because he gave his resignation notice. Consolidated Findings ## 50–51, and 53. Submitting a two-week notice of resignation is not misconduct. There is also nothing in the record to suggest that the claimant violated a rule or policy of the employer. Therefore, the employer has not met its burden under G.L. c. 151A, § 25(e)(2), to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest or a knowing violation of a reasonable and uniformly enforced policy or rule of the employer.

The claimant intended to work for the duration of his two-weeks' notice, and he intended to resign on November 17, 2023. Consolidated Finding # 51. Considering these facts, the claimant's separation from employment as of November 17, 2023, is deemed to be voluntary and his eligibility for benefits at that point is properly analyzed under G.L. c. 151A, § 25(e)(1).

We consider the following separate provisions under G.L. c. 151A § 25(e), which state, in relevant part:

[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 . . .

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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 not carried his burden. We disagree. Upon our review of the entire record, including the testimony from both hearings and the consolidated findings of fact, we believe that the claimant has shown that he quit his 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, not his personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

In this case, the claimant quit his job, at least in part, because he disagreed with the PIP issued to him. Consolidated Finding # 59. Although the employer never discussed the claimant's performance previously, the new supervisor and HRM issued the claimant a PIP, which also served as the claimant's annual review for 2023, on November 1, 2023. Consolidated Findings ## 22, 24–25, and 27–28. Despite the claimant's detailed explanation about the errors in the PIP, how he was unfairly blamed for issues that were beyond his control, and the unreasonableness of having to be subject to this plan, an employer has a right to place an employee on an improvement plan. His distress about receiving this PIP is similar to objecting to what an employee perceives to be an unfair reprimand. However, a workplace reprimand does not, by itself, create good cause attributable to the employer to quit a job. See Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 731 (1986).

However, the claimant also testified that, for several months prior to receiving the PIP, his supervisor had been treating him differently from other buyers in his work location.<sup>1</sup> It is the claimant's evidentiary burden to show that the employer's behavior was unreasonable so as to create good cause for him to quit his job.

During both the initial and remand hearings, the claimant described in detail how the new supervisor treated him differently from the two other buyers in his office. Specifically, the new supervisor told the claimant that he would not communicate to the claimant directly but would speak to him through one of the claimant's colleagues, who would essentially supervise the claimant and forward him assignments from the new supervisor. Consolidated Findings ##10–12. The claimant had trained the proxy supervisor, and she had no supervisory authority over him. Consolidated Finding # 12. Additionally, the other buyer in the Massachusetts office was not required to report to the proxy supervisor, and she dealt with the new supervisor directly. Consolidated Finding # 14. While the new supervisor initiated one-on-one meetings with the claimant's colleagues, he did not initiate these meetings with the claimant. Consolidated Findings ## 15–16. The claimant witnessed the new supervisor visit his colleagues' offices, greet them, chat with them and hold meetings with them; however, the new supervisor never did any of those things with the claimant. Consolidated Findings ## 17–18. Although the claimant acknowledged during the remand hearing that this was not "part of the job," he testified that he noticed the new supervisor never invited the claimant out to lunch but invited his colleagues out to lunch instead. See Consolidated Finding # 19. The claimant also initiated contact with the new supervisor many times but often received no response. Consolidated Finding # 20. Similarly, the claimant organized meetings between him and the new supervisor to discuss the claimant's performance,

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<sup>1</sup> 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).

but the new supervisor never showed up for these meetings. Consolidated Finding # 21. The new supervisor also blamed the claimant for certain job challenges that were out of the claimant's control, such as vendors raising prices or failing to deliver timely product, or when the employer's receiving department failed to give the claimant an accurate update. Consolidated Finding # 23. 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 new supervisor and directed towards the claimant can be considered reasonable. Delegating a proxy supervisor, deliberately excluding the claimant from work related meetings and luncheons to which his professional peers were invited, and routinely ignoring the claimant's requests for communication and feedback, in particular, are devoid of any constructive purpose in a work environment.

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. Many times, the claimant contacted the new supervisor, but he did not respond. Consolidated Finding # 20. The claimant tried to organize meetings with the new supervisor to discuss performance, but the new supervisor did not attend. Consolidated Finding # 21. The claimant also protested having to communicate through a proxy supervisor, to no avail. *See* Consolidated Findings # 10 – 13. We are satisfied that the claimant made a reasonable attempt to preserve his employment. Given the employer's ongoing inaction and the negative performance review which followed, the claimant could reasonably believe that further efforts to keep his job would have been futile. *See* Board of Review Decision 0033 5561 29 (June 29, 2020) (Board awarded benefits where claimant was treated unfairly by supervisory employees, and their negative views of her would have led her to reasonably believe management would not be receptive to her concerns).

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

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning November 12, 2023, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 16, 2025**



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](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.

JMO/rh