

**The claimant resigned from her position because she was subjected to sexually charged comments, including comments about her physical appearance, from her immediate manager. Held she did not need to show reasonable attempts to preserve her job before resigning and is eligible for benefits pursuant to G.L. c. 151A, § 25(e).**

**Board of Review  
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**Issue ID: 334-FHJ5-P5DH**

### 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 November 22, 2024. She filed a claim for unemployment benefits with the DUA, effective November 10, 2024, which was denied in a determination issued on December 6, 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 January 3, 2025. 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, which took place over three sessions. 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 established good cause for resigning because the employer created a toxic, hostile, and abusive 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. On December 12, 2023, the claimant began working full-time for the employer, a dental practice, as a front desk receptionist. She reported to the owner and the office manager. Her most recent rate of pay was \$33.00 per hour.

2. The employer does not have a dedicated internal human resources department. They use a third-party agency for human resources purposes.
3. In 2024, the claimant frequently texted with her manager in a friendly and joking manner. They made use of emojis, GIFs, and memes.
4. The claimant is a lesbian and was 'out' at her work.
5. The claimant shared information about her sexuality and sexual inexperience with her manager. She often made self-deprecating remarks.
6. The manager would respond in a joking and supportive manner.
7. On one occasion, the claimant texted the manager, "Thanks for letting me vent and stuff." The manager replied with an emoji and stated, "you and ur [sic] 1.5 self." This statement was 'ha ha'ed by the claimant. (Remand Exhibit 8).
8. The number 1.5 was a reference to the claimant's sexual inexperience.
9. In June and July of 2024, the claimant and her manager exchanged banter about the claimant's crush.
10. The claimant texted, "So me having a crush on this woman is a huge deal and I feel [claimant] is finally back [three emojis] My soul is not broken anymore." The manager replied, "Awe [sic] [claimant]! I' [sic] glad you shared that with me! Am glad you are back too!! You are an amazing person and deserve to be happy!" The claimant hearted the manager's text and replied, "Aww [emoji] thank you [manager] heart You are making me cry now lol That means a lot!" (Remand Exhibit 8).
11. The claimant and the manager joked about the claimant wearing a push-up bra when a patient she liked was coming into the office. (Remand Exhibit 8).
12. The claimant and the manager would also discuss and joke about the claimant's sexuality and lack of sexual experience at work.
13. The claimant and the manager would also discuss major events in their personal life, such as the passing of the claimant's brother.
14. On September 26, 2024, the claimant texted the manager, "Check my latest TikTok" and the employer replied, "will do on lunch". The claimant told the manager that "It's funny if you like Cardi B. It's in honor of [claimant's brother] too. Ok. 2 months today". (Remand Exhibit 8).

15. On one occasion, the manager made comments in the breakroom during lunch about showing people how to use a condom, using a banana to represent a phallus. The claimant and another employee saw this.
16. On some occasions, the comments and conversations, both in person and over text messages, made the claimant uncomfortable. The claimant would go along with the manager's joking because she did not want to upset or confront the manager, who was her superior.
17. The claimant struggled to balance her desire to be friendly with her manager with her discomfort with their conversations.
18. The manager sometimes had meetings with employees in her office with the door closed.
19. At times, the manager would have meetings with the claimant in her office, where she made comments that the claimant felt were unprofessional and hurtful.
20. On at least two occasions, the manager would criticize the claimant for her physical appearance.
21. On one occasion, the claimant had appeared for work with a stamp on her hand from a concert she had attended the previous night. The manager spoke to her in her office and told her that it was inappropriate, and that she had to remove the stamp from her arm.
22. In September of 2024, the manager criticized the claimant for not dressing professionally, including showing skin. She also made a comment about the claimant's pants, stating that the style of the claimant's pants "made her butt look bigger."
23. At some point in October of 2024, the claimant's relationship with her manager soured. The claimant tried to step away from her more personal interactions with the manager without being antagonistic.
24. When the claimant tried to step away from these types of interactions, the manager would say that she missed talking to the claimant.
25. In October of 2024, the employer's office was considering allowing employees to dress up for Halloween. The claimant was considering dressing as the Muppet 'Miss Piggy.' She joked with the manager about the costume.
26. On October 8, 2024, the claimant texted the manager an image of a woman in a pink negligee with emphasized breasts called, "Women's Sexy Pink Ladybot Costume." She texted, "Did you say sexy Miss piggy? [emoji]. The manager

texted back with an emoji of shocked face and “Stopppppp”. The claimant ‘haha’ed the manager’s text. (Remand Exhibit 8).

27. In the fall of 2024, the claimant began looking for a new position, where she would have more responsibilities. She applied for an assistant manager position with a different employer.
28. On October 31, 2024, the claimant spoke to the manager about potentially leaving the employer for a new position. The conversation occurred behind closed doors in the manager’s office.
29. The manager was upset about the claimant potentially leaving and asked questions about the new position, including what they offered that the employer did not offer. The manager questioned the claimant’s ability to perform the duties of an assistant manager.
30. After the meeting, the manager called the claimant a ‘complainer’.
31. When the claimant left the meeting, she was upset and embarrassed. She debated bringing her concerns to the owner of the practice.
32. The claimant spoke to a co-worker about her meeting with her manager and how it made her feel. The co-worker encouraged her to bring her concerns about the manager to the owner of the practice.
33. After speaking with the claimant, the co-worker went on his own to the owner of the practice and informed him about the claimant's concerns.
34. On October 31, 2024, the claimant brought her concerns with the manager to the owner.
35. The claimant informed the owner that she had been looking for other positions, but that she enjoyed working with the team. She texted the owner that she could not have the manager “be a part of this. She is the one not handling it correctly.” (Remand Exhibit 6).
36. The owner texted the claimant and asked for “specific examples of the situations and now they were approached and not handled correctly. You can tell me tomorrow just wanted to give you a heads up. I will probably have (another co-worker) come in.” (Remand Exhibit 6).
37. The claimant texted, “I will give you specific examples. But not via text.” and asked for a conversation with him first. (Remand Exhibit 6).
38. The owner texted, “From experience, these are not conversations I am comfortable having without a third person present.” (Remand Exhibit 6).

39. The claimant understood and asked for assurance that everything would be confidential. The owner promised that it would be. (Remand Exhibit 6).
40. On November 1, 2024, the claimant spoke to the owner about the manager's comments and behavior. She explained the effect on her mental health. A dental hygienist was present in the meeting as a note-taker.
41. On November 1, 2024, the claimant followed up via text with the employer about another detail concerning her October 31, 2024, meeting with the manager that she had not brought up. (Remand Exhibit 6).
42. After the meeting, the note-taker presented the claimant as[sic] a summary of what had been discussed. The claimant provided corrections to the report where she felt there were inaccuracies or where she felt that more details or explanations were needed. (Exhibit 1).
43. The owner treated the claimant's corrected statement as a final statement.
44. The claimant did not realize that this was a final statement.
45. The owner began an investigation into the claimant's report. Until November 12, 2024, the manager was not in the office.
46. The claimant texted the owner and shared her concerns about the manager being back in the office. The owner assured her no retaliation would occur and that nothing would be discussed with anyone except the manager and the note-taker present. He told the claimant to come to him if any retaliation or non-confidential discussions occurred. (Remand Exhibit 6).
47. On November 13, 2024, the manager gave the owner her statement.
48. During the investigation, the claimant felt that her coworkers were treating her differently. She felt that they were ignoring her and not engaging in normal social pleasantries.
49. The claimant became concerned about retaliation.
50. The situation at work affected the claimant's mental health. She felt mortified and dreaded working with the manager. She developed symptoms of depression, anxiety, and insomnia, which she had never had before.
51. On November 15, 2024, the owner gave the claimant the results of his investigation. He informed the claimant that the issue was a 'she-said, she-said' and that he could not find any evidence of harassment, discrimination, or bullying. (Exhibit 12).

52. The manager was given verbal counseling on appropriate interactions and proper documentation of all conversations had with staff members. (Exhibit 12).
53. The owner's report stated that, "Everyone involved in this has been reminded that they cannot retaliate or harass anyone involved in the investigation and if it is found that this is happening, immediate termination will occur." (Exhibit 12).
54. The claimant was shocked and upset at the owner's conclusions. She felt that she had been treated unfairly.
55. On November 15, 2024, the claimant spoke to the owner about her dissatisfaction with the results of the investigation. She asked him what he would do if it was his daughters who were experiencing harassment at work.
56. On November 15, 2024, the claimant began seeing a therapist for anxiety. She told her therapist that she was "being harassed at work for her sexuality and physical characteristics" and that "it felt unsafe to continue working in that environment."
57. On November 15, 2024, the claimant approached the co-worker she had confided in about her concerns with the manager on October 31, 2024. She asked the co-worker if he had told the owner about what she had told him. The co-worker admitted that he had. The claimant asked why. The co-worker told her that she had gotten him involved in something he was not part of and that he had followed office protocol by reporting it to the owner. (Remand Exhibit 5).
58. The claimant told the coworker that he had ruined things for her, that he should have asked her first before going to the owner, that she wanted to take smaller steps, and that he had given the owner time to prepare. (Remand Exhibit 5).
59. The co-worker asked the claimant not to involve him in the situation. (Remand Exhibit 5).
60. The claimant told the co-worker that she was upset with him and that she would be talking to a lawyer. (Remand Exhibit 5).
61. The co-worker reported the conversation to the owner via text message. He felt uncomfortable being alone with the claimant. (Remand Exhibit 7).
62. During the evening of November 15, 2024, the claimant texted the co-worker. She stated, "I am very frustrated that you spoke to [owner] about something that doesn't involve or affect you. And you knew I was planning to call him, I was even asking if you had his number. Then you go off and call him [b]efore I get

- a chance to do it. It has potentially ruined quite a lot for me.” (Remand Exhibit 7).
63. The co-worker was upset and scared by this message.
64. The co-worker shared the text with the owner. The owner told the co-worker to ignore it. (Remand Exhibit 7).
65. The owner became concerned about the claimant retaliating against the co-worker.
66. On November 18, 2024, the claimant had a family emergency and took an unpaid leave.
67. On November 18, 2024, the owner texted the claimant and asked her about her conversation with her co-worker prior to making her report. (Remand Exhibit 6).
68. The owner texted, “[Co-worker] approached me and said you have a conversation with him as well as text on Friday. Can you please tell me about that conversation.” (Remand Exhibit 6).
69. The claimant tried to call the owner, but did not reach him. She texted, “I just tried to call. Feel free to call me if you have any work-related questions.” (Remand Exhibit 6).
70. The owner texted, “We can catch up first thing in the morning. Not a problem.” (Remand Exhibit 6).
71. The claimant texted, “Can you please call me when you have a second”. (Remand Exhibit 6).
72. The employer texted, “Best for us to communicate either via text or in person.” (Remand Exhibit 6).
73. The claimant texted, “Texting is not a form of communication for me. I need to ask you a couple of questions. I will not have any discussion in the office without my lawyer present.” (Remand Exhibit 6).
74. In the evening of November 18, 2024, the owner texted the claimant “OK - you cannot return to work until you answer about [Co-worker]. We can meet first thing tomorrow with an employee of your choosing present; or you can have your attorney reach out to me with your [sic] questions; or you can text/email me your questions and I am happy to answer them as well.” (Remand Exhibit 6).
75. The claimant became concerned that she was now being retaliated against and punished for reporting the manager.

76. On November 19, 2024, the claimant texted, “At this point I do not feel comfortable having anyone at work present during our [remainder of the text is not in the record]” (Remand Exhibit 6).
77. The text conversation continued on November 19, 2024. The owner texted the claimant, “I just need you to respond about [Co-Worker]. You can easily type out something or we can email back and forth if you have questions for me – there is no reason that we have to have an in-person conversation about this. This way it removes anyone being present and we can move on from this faster.” (Remand Exhibit 6).
78. The claimant texted, “I did try to call you yesterday . . . Anything further will have to take place with a third person. And that might take some time.” (Remand Exhibit 6).
79. At that point, the owner texted “After what you said to me on Friday and involving my underage children, I can no longer speak to you one-on-one. Again, written communication would mitigate this. Conversations do not have to take place in person if you are concerned about who is present.” (Remand Exhibit 6).
80. The claimant attempted to call the owner. She was concerned about why the employer was asking her about the conversation.
81. The owner refused to speak to the claimant one-on-one based on her comments to him during the November 15, 2024, meeting about his daughters.
82. The claimant was unsettled by the employer's request and afraid of retaliation from the owner of the practice for reporting her manager for harassment. She was extremely anxious and could not sleep.
83. On November 22, 2024, the claimant quit her position with the employer due to a hostile work environment created by her manager's harassment and her fear of retaliation for reporting the manager, along with the effect on her mental health.
84. The claimant informed the owner of the practice that she was quitting, via email.
85. On December 6, 2024, the Department of Unemployment Assistance issued a Notice of Disqualification, denying the claimant benefits under Section 25(e)(1) of the Law commencing the week beginning November 17, 2024, and until she has had 8 weeks of work and has earned an amount equivalent to or in excess of 8 times her weekly benefit amount. The claimant appealed the Notice of Disqualification.



86. On December 27, 2024, the claimant and the claimant's representative [sic] attended an appeal hearing. The employer, invited as a witness-only, did not attend the hearing.

87. On January 2, 2025, the claimant received the decision reversing the Notice of Disqualification.

#### Credibility Assessment:

The claimant and the claimant's attorney attended a hearing on December 27, 2024.<sup>1</sup> The claimant, the claimant's attorney, and the employer's witness (the owner of the practice) attended two sessions of a remand hearing on March 5, 2025, and March 27, 2025, for the purpose of collecting additional evidence.<sup>2</sup>

During both sessions of the hearing, both the claimant and the employer's witness were emotional and made serious accusations about the other's conduct. This is not unreasonable, given that the case includes issues of sexual harassment, workplace bullying, and retaliation. Therefore, it is determined that the parties' demeanors during the hearing do not cut against their credibility.

Nevertheless, the claimant and the employer gave conflicting testimony about the circumstances surrounding the claimant's [decision to] quit. The claimant described a relationship with a manager rife with sexual harassment and workplace bullying, confiding in a co-worker who revealed information to the owner without the claimant's consent, an investigation that was resolved unfairly, and then retaliation against her by the owner for reporting the issue, resulting in her quitting due to a hostile work environment and resultant health issues. The owner of the practice testified that the claimant and the manager had a very friendly and close relationship both at work and outside of work, that when the claimant informed her manager that she would be leaving, she was upset at the manager's response, that the claimant brought her concerns to a co-worker and the owner, that the claimant was unhappy with the results of the investigation, that the claimant began harassing the co-worker, and that she ultimately quit instead of answering the owner's questions about her interactions with the co-worker.

As a preliminary matter, it must be made clear that the claimant's relationship with her manager is not the most important factor in this case. The claimant and the owner of the practice provided extensive testimony and documentary evidence, including dozens of screenshots of text messages, in order to support their differing characterizations of that relationship. It is obvious that the claimant and the manager had a very friendly-seeming relationship that transgressed the appropriate boundaries between an employee and their supervisor. While the claimant's

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<sup>1</sup> The December 27, 2024 hearing audio file, which is part of the hearing record, indicates the claimant attended the hearing without any representation or witnesses.

<sup>2</sup> The claimant was represented by a legal services paralegal during the remand hearing only, which took place over three sessions on March 5, 2025, March 27, 2025, and April 16, 2025. The notices of hearing for each session were entered into the record as Remand Exhibits 4, 11, and 12.

explanation that the owner had cherry-picked the text messages he submitted to make it appear that the claimant and the manager had a close, constant friendship is valid, the submitted text messages prove that the claimant and the manager discussed the claimant's sexuality and sexual experience and made jokes with each other, often using emojis and GIFs, which are indicative of a friendship. However, the inappropriate nature of these text messages does illustrate the problem of the power imbalance between an employee and a supervisor, lending credibility to the claimant's testimony that she was going along with these jokes, despite being uncomfortable with them, because she wanted to be friendly with her boss. Some of the manager's statements or actions at work, as testified to by the claimant, are inappropriate and create a hostile work environment (such as discussing a sex act in the lunchroom and making comments about the claimant's body), while others are appropriate to the manager's role (such as criticizing the claimant for inappropriate workplace attire). Whatever the true nature of the relationship was, it is certain that by October of 2024, the relationship had soured, and the claimant was looking for another position. It is also certain that the claimant and her manager had a meeting on October 31, 2024, which left the claimant upset and prompted her to report the manager to the owner for harassment, discrimination, and bullying.

The central issue here is the claimant's reaction to the owner's November 15, 2024, report, which concluded that no discrimination, harassment, or bully had occurred, and whether the resulting events justify the claimant's quit as either urgent, compelling, and necessitous, or for good cause attributable to the employer. During the initial hearing, the claimant testified that she brought her concerns to the owner, that her concerns were ignored, that she was in distress and sought medical treatment, and that when she tried to talk to the owner after he issued his report, he demanded that she disclose information about a conversation she had with a co-worker if she wanted to return to work. The claimant provided a written letter from her therapist confirming that, around this time, she was seeking help with psychological distress due to the situation at work. While this testimony does factually represent some of the events of November of 2024, the claimant omitted several key factors that the employer brought up, with documentary support, in the remand hearing. The most important of these are the claimant's statements and text messages to her co-worker on November 15, 2024, accusing him of getting involved in something that was not his business, ruining things for her, and giving the owner time to prepare. Although this co-worker was not present for the hearing to be questioned, the owner provided a witness statement and a screenshot of a text message that demonstrated the effect of the claimant's communications on the co-worker – specifically that the co-worker was upset, scared, and uncomfortable being alone with the claimant. In light of this, the owner's request that the claimant provide information to him about her conversation with the co-worker and his statement that she could not return to work until she provided this information no longer appears to be retaliation against the claimant for reporting the manager, but rather a preliminary inquiry as to whether or not the claimant was retaliating against her co-worker for speaking to the owner. This appears to be the same protocol used by the owner when he was investigating the manager, and thus the request is more likely than not, reasonable. The claimant's refusal to answer these questions and

her statements about hiring a lawyer indicate that by this point the professional relationship had broken down, which is also shown by the owner's statements that he no longer felt safe speaking to the claimant one-on-one. As the claimant's documented medical issues seem to stem from the ongoing issues with the employer, it is more likely than not that the issue is whether the employer's actions created a hostile work environment causing the claimant to quit.

### 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. After such review, the Board adopts the review examiner's consolidated findings of fact, except as follows. Consolidated Finding # 30 erroneously states that the manager called the claimant a "complainer" after the meeting, where the claimant testified that the manager made this comment during, not after, the meeting.<sup>3</sup> In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We also believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. We further agree with the review examiner's decision to award benefits.

The findings show that the claimant resigned from the employer for three reasons: a hostile work environment created by her manager's harassment, fear of retaliation for reporting the manager, and the effect these issues had on her mental health. Consolidated Finding # 83. Thus, her eligibility for benefits is governed by the following statutory 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. . . .

Specifically, the claimant alleged that her manager, a supervisor in the employer's dental practice, harassed her based on her sexual orientation and engaged in other inappropriate behavior of a sexual nature throughout her employment. *See* Consolidated Findings ## 12, 15, 16, 22, and 56. Therefore, we also consider the sixth paragraph of G.L. c. 151A, § 25(e), which provides as follows:

An individual shall not be disqualified, under the provisions of this subsection, from receiving benefits if it is established to the satisfaction of the commissioner that the reason for leaving work and that such individual became separated from employment due to sexual, racial or other unreasonable harassment where the

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<sup>3</sup> While not explicitly incorporated into the review examiner's findings of fact, the claimant's uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed into 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).

employer, its supervisory personnel or agents knew or should have known of such harassment.

For the purposes of this paragraph, the term “sexual harassment” shall mean sexual advances, . . . and other verbal or physical conduct of a sexual nature when . . . (c) such advances, . . . or conduct have the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment. . . .

The DUA has also promulgated regulations, which clarify these statutory provisions. 430 CMR 4.04(5)(a) defines sexual harassment, in relevant part, as follows:

(2) Sexual harassment-sexual advances, requests for sexual favors, and other physical conduct of a sexual nature when . . .

(c) such advances, requests or conduct have the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment.

430 CMR 4.04(5) further provides, in relevant part, as follows:

(b) Sexual, racial or other unreasonable harassment may result from conduct by the employer or the employer’s agents, supervisory employees, co-employees or non-employees. Such conduct may occur in or off the worksite and on or off company time. . . .

(c) 1. A claimant shall not be disqualified from receiving benefits under M.G.L. c. 151A, § 25(e)(1) for leaving work voluntarily without good cause attributable to the employing unit or its agent if he or she establishes to the satisfaction of the Commissioner that his or her reason for leaving work and separation from employment is due to:

a. sexual, racial or other unreasonable harassment by an employer, its agents or supervisory employees and the employer, its agents or supervisory employees knew or should have known of such harassment . . .

2. For purposes of determining a claimant’s eligibility for benefits under 430 CMR 4.04([5])(c)1a., an employer is deemed to have knowledge of sexual, racial or other unreasonable harassment committed by its agents and supervisory employees in connection with the employment relationship regardless of whether the employer had actual knowledge of these acts.<sup>4</sup>

(d) In determining whether a claimant’s reasons for leaving work is due to harassment, the Division will look at the totality of the factual circumstances resulting in the claimant’s separation from employment, such as the nature of the

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<sup>4</sup> Although the official version of 430 CMR 4.04(5)(b)(2) refers to “430 CMR 4.04(7)(c)1.a,” this appears to be a scrivener’s error, as there is no subsection (7)(c)1a under 430 CMR 4.04.

alleged harassment and the context in which the alleged harassing incidents occurred

The express language of these provisions places the burden of proof upon the claimant.

Although the claimant testified that she experienced mental health challenges prior to her resignation, she contended that these issues arose from her employment. Specifically, the claimant alleged that her mental health was adversely affected by a hostile work environment created, in part, by her manager's harassment. *See Consolidated Findings ## 40, 50, 56, and 83.* 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).

It is undisputed that the claimant had what appeared to be a close personal relationship with her manager until October, 2024, when the relationship soured. Consolidated Findings ## 3, 5–7, 9–14, and 23. The findings indicate that the claimant tried to step away from her more personal interactions with the manager, but that, when she did, the manager would say that she missed talking to the claimant. *See Consolidated Findings ## 23–24.* In her credibility assessment, the review examiner concluded that “some of the manager's statements or actions at work . . . are inappropriate and create a hostile work environment,” and pointed out that the inappropriate nature of the text messages in the record between the claimant and her manager illustrate “the problem of the power imbalance between an employee and a supervisor, lending credibility to the claimant's testimony that she was going along with these jokes, despite being uncomfortable with them, because she wanted to be friendly with her boss.” 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). In this case, we believe that the review examiner's view of the evidence is reasonable in relation to the evidence presented.

Consolidated Finding # 16 indicates that, notwithstanding the close, personal relationship between the claimant and her manager, there were occasions when the manager's comments and conversations made the claimant uncomfortable. For instance, Consolidated Finding # 19 shows that, while in her office, the manager made comments that the claimant felt were unprofessional and hurtful. There were also at least two occasions where the manager would criticize the claimant for her physical appearance. Consolidated Finding # 20. In one such instance, the manager commented to the claimant that her pants “made her butt look bigger.” Consolidated Finding # 22. This comment about the claimant's physical appearance can reasonably be viewed as sexually harassing behavior, as defined by 430 CMR 4.04(5)(a)(2)(c) and 4.04(5)(b).

On one occasion, the claimant and another employee witnessed the manager make comments in the employer's breakroom during lunch about showing people how to use a condom, and she used

a banana to represent a phallus. *See* Consolidated Finding # 15. This is self-evidently conduct of a sexual nature within the meaning of 430 CMR 4.04(5)(a)(2).

Not every incident described in these consolidated findings amounts to good cause for leaving employment. Nonetheless, in our view, this record supports a conclusion that the claimant's resignation was due to a sexually offensive work environment.

Because we conclude that the claimant quit due to a sexually offensive work environment, she is not required to show reasonable efforts to preserve her job before quitting. *See* 430 CMR 4.04(5)(c)3; *see also* Tri-County Youth Programs, Inc. v. Acting Deputy Dir. of Division of Employment and Training, 54 Mass. App. Ct. 405, 410–411 (2002) (“In cases involving allegations of sexual harassment, . . . claimant need not show that she took all or even ‘reasonable steps’ to preserve her employment.”). All she needs to show is that “the employer or its supervisory personnel knew or should have known of such harassment.” G.L. c. 151A, § 25(e). Inasmuch as all instances involved the claimant's immediate manager, and it is also undisputed that the claimant reported these events to the practice owner, it is evident that the employer knew of the harassment. *See* Consolidated Findings ## 15, 16, 19, 33–34, and 41–42.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she left her job for good cause attributable to the employer due to sexual harassment, as meant under 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 November 17, 2024, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 20, 2025**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

**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