

The claimant quit two days after learning that the employer's video security cameras also recorded audio, a decision she believed was unlawful. However, because the employer had been consistently responsive in investigating her complaints, the claimant did not show that she took reasonable steps to preserve her employment or that further attempts would have been futile. Therefore, the claimant did not show she resigned for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review**  
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**Issue ID: 334-FHJM-RFHL**

### 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 January 26, 2025. She filed a claim for unemployment benefits with the DUA, effective January 26, 2025, which was denied in a determination issued on February 15, 2025. 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 March 28, 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). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant resigned for good cause attributable to the employer because the employer's security cameras recorded audio in addition to video footage and because the human resources department did not address her concerns about a bartender hitting the CEO on his behind, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant worked as a Director of Retail Operations for the employer, a cannabis retail store, from 3/3/23 until she separated from the employer on 1/26/25.

2. The claimant worked full-time, 45 to 50 hours a week, earning an annual salary of \$80,000.
3. The claimant left work after becoming aware of the employer having cameras in the workplace that recorded both audio and video footage and after she became aware of a bartender hitting the behind of the CEO.
4. On 1/15/25, the claimant was told by the General Manager that he had witnessed a bartender hit the CEO on the behind. He asked the claimant not to tell anyone what he had witnessed.
5. On 1/24/25, the claimant was having a personal conversation with the General Manager when the manager told the claimant to watch what she says because there were cameras that were recording both video and audio. The claimant went over to the camera that was charging and began singing and she could hear herself on the General Manager's phone.
6. The claimant met with Human Resources on 1/24/25 and informed her [sic] about the bartender hitting the CEO's behind and about the cameras that were in the workplace that were recording both audio and video footage. Human Resources was very dismissive of the claimant's concerns.
7. The claimant went back to her desk and was crying before she went outside to her car. The claimant ended up going home and subsequently emailed the employer to tell them she left for the day.
8. The claimant took the weekend to think things over. The claimant felt she did not want to be involved in this behavior and had no choice but to leave her job.
9. On 1/26/25, the claimant contacted Human Resources and informed them that she did not feel comfortable working in the work environment. Human Resources told the claimant she had checked into the concerns she raised and did not find them valid.
10. The claimant informed the employer she was quitting.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 6 that states that Human Resources was very dismissive of the claimant's concerns as inconsistent with the evidence in the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as

discussed more fully below, we reject the review examiner's legal conclusion that the claimant is entitled to benefits.

Because the claimant resigned from her position with the instant employer, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), which provides, 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 explicit language in G.L. c. 151A, § 25(e)(1), places the burden of persuasion on the claimant.

The review examiner found that the claimant resigned her position with the instant employer because she did not feel comfortable in the workplace after learning that the employer's security cameras also recorded audio and because the employer failed to address her report that one of the employer's bartenders hit the CEO on his behind. *See Findings of Fact ## 4, 5, and 9.* 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). To determine if the claimant has carried her burden to show good cause under the above-cited statute, we consider whether the claimant's workplace complaint was reasonable. *See Fergione v. Dir. of Division of Employment Security*, 396 Mass. 281, 286 (1985) (claimant's belief that she was being harassed was not a reasonable one).

When the review examiner asked the claimant why she resigned, the claimant testified that she made the decision to quit because she had multiple issues communicating with the employer over the past few weeks culminating in her concerns about the employer recording audio on its security cameras.<sup>1</sup> Although the claimant later testified that the incident between the bartender and the CEO contributed to her discomfort in the workplace, she conceded that she was not involved in or a witness to the incident and had only heard of it from a co-worker. Finding of Fact # 4. Because the claimant ultimately made the decision to resign after learning the security cameras also recorded audio, our analysis is focused on whether the claimant's complaint about recording audio was reasonable.

While general and subjective disappointment with an employer's decisions is insufficient, a claimant may show she resigned for good cause attributable to the employer if the employer imposed upon her an unlawful or unethical policy or practice. *See Sohler v. Dir. of Division of Employment Security*, 377 Mass. 785, 789 (1979) (citations omitted) (an employer policy or

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<sup>1</sup> This portion of the claimant's testimony, while not explicitly incorporated into the review examiner's findings of fact, 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).

practice that could subject the claimant to professional sanction or legal liability may constitute good cause attributable to the employer to resign). In this case, the claimant explained that she resigned because it was unlawful for the employer to record audio in addition to video footage on its security cameras. *See* Findings of Fact ## 5 and 6. Whether or not the employer's recording was unlawful, the claimant is not eligible for unemployment benefits.<sup>2</sup>

The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984).

In concluding that the claimant reasonably believed that she had no choice but to resign, the review examiner implicitly accepted as credible the claimant's testimony that Human Resources was unresponsive to her concerns. 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).

Given the claimant's inconsistent and contradictory statements, we reject this review examiner's assessment. Despite initially testifying that Human Resources dismissed her concerns, the claimant later stated that Human Resources informed her that it investigated both her complaint about the cameras and her report of the bartender's actions. Finding of Fact # 9. The latter portion of the claimant's testimony comports with her statements in her submissions to the DUA, which were admitted into evidence as Exhibits 1, 2, and 4. In Exhibit 4, a questionnaire dated January 28, 2025, the claimant stated that, when she reported her concerns about the cameras on January 24<sup>th</sup>, Human Resources acknowledged that recording audio was improper. In Exhibit 2, a fact-finding questionnaire dated February 21, 2025, the claimant confirmed that Human Resources had investigated her concerns about the security cameras and had interviewed the employee that the claimant had identified as a witness to the incident involving the bartender and the CEO. Finally, in Exhibit 1, an undated statement prepared by the claimant, she stated that Human Resources had been very concerned about her report of inappropriate behavior, sought footage of the incident, and interviewed the employees purported to be involved in the incident. Therefore, the review examiner's implicit credibility assessment is unreasonable in relation to the evidence presented.

While the claimant may have believed that the employer's investigation was deficient, she failed to provide any evidence validating such an assertion. To the contrary, the documentary evidence that she submitted corroborates her testimony that the employer took appropriate steps to investigate her concerns. *See* Finding of Fact # 9. Despite the employer's efforts to address her complaints and concerns, the claimant resigned on January 26, 2025, effective immediately. Under

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<sup>2</sup> The claimant has not cited any statute, regulation, or court decision prohibiting an employer from recording audio on surveillance cameras.

such circumstances, the claimant has not shown that she reasonably believed that further steps to preserve her employment would have been futile.

We, therefore, conclude as a matter of law that the claimant resigned her position voluntarily without good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week of January 26, 2025, 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 - June 4, 2025**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](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.

LSW/rh