

**Paraprofessional resigned because the student she was assigned to work with repeatedly engaged in inappropriate sexual conduct. The employer was aware of the student's conduct and had the ability to address it. Although she resigned before the employer completed its investigation, she is not disqualified pursuant to G.L. c. 151A, § 25(e)(1), because claimants are not required to take reasonable efforts to preserve their employment in instances of alleged sexual harassment.**

**Board of Review  
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**Issue ID: 352-N3VH-JKFF**

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 separated from her position with the employer on March 1, 2025. She filed a claim for unemployment benefits with the DUA, effective April 6, 2025, which was denied in a determination issued on September 22, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 29, 2025. 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 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 did not take reasonable steps to preserve her employment because she did not allow the employer's Principal to complete her investigation into the claimant's complaints, 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. On December 4, 2023, the claimant started working full-time for the employer, a municipal school district, as a One-to-One Education Support Professional (ESP) in the employer's Special Education Department.
2. The claimant was assigned to work at the employer's high school.
3. The claimant's supervisors included the Assistant Principal and the Principal.
4. The claimant also worked with a Unit Aide Teacher in the classroom. The Unit Aide Teacher would distribute the claimant's assignments to the claimant. The Unit Aide Teacher was not the claimant's supervisor.
5. The claimant was scheduled to work for the employer Monday through Friday from 7:15 a.m. until 2:15 p.m.
6. The claimant was paid \$24.23 per hour working for the employer.
7. The claimant was assigned to work One-to-One with a student enrolled at the employer's high school (hereinafter the student). The student required Special Education Services in connection with the student having a feeding tube, autism, ADHD and a social emotional disability.
8. In 2023, when the claimant initially started working with the student and for the employer, the claimant was concerned about the safety and wellbeing of the student as other students in the classroom were antagonizing the student in connection with the student touching his pants outside his genital area. At this time, the claimant and her co-working team addressed the situation, and the matter was taken care of initially.
9. The claimant initially returned to work for the employer's 2024–2025 school year and was assigned to work with the same student on a One-to-One basis.
10. During the employer's 2024–2025 school year, the claimant started to feel uncomfortable and concerned about her own safety and the safety of the student as the claimant witnessed the student touch his pants near his genital area while in school and would attempt to conceal the touching with his Chromebook. The student never exposed his genital area while in school.
11. In September 2024, the claimant complained to the Unit Aide Teacher that the claimant was concerned that the student was touching his genital area outside of his pants while in school. In response to this complaint, the Unit Aide Teacher asked if the claimant was certain that the student's behavior was not connected with the student's anxiety. The claimant subsequently reported back to the Unit Aide Teacher that the claimant did not believe that the student's behavior was connected with anxiety as the student would remove his hand at times. The claimant was not certain if the student was touching his pants near his genital area to adjust himself.

12. After the claimant complained to the Unit Aide Teacher about the claimant feeling uncomfortable with the student touching his pants near his genital area, the Unit Aide Teacher informed the claimant that the student's parents were going to attend a meeting in October 2024 or November 2024.
13. After the student's parents had a meeting regarding the student's Special Education Services in either October 2024 or November 2024, the claimant approached the Unit Aide Teacher inquiring about if the behavior was mentioned to the student's parents about the student touching his pants near his genital area while in school. In response to this inquiry, the Unit Aide Teacher informed the claimant that it was not the Unit Aide Teacher's place to bring up this behavior but rather it was the Adjustment Counselor's place.
14. The claimant subsequently approached the Adjustment Counselor to inquire if the student's parents were informed during the parent meeting about the student touching his pants outside of his genital area while in school. In response to this inquiry, the Adjustment Counselor replied that it was not the Adjustment Counselor's role to inform the parents of this information during the parent meeting.
15. After the claimant complained to the Unit Aide Teacher that she was uncomfortable with the student touching his pants near his genital area, the student continued to touch his pants near his genital area while in school.
16. The claimant subsequently complained to the Assistant Principal about feeling uncomfortable and concerned that the student was touching his pants near his genital area.
17. The student continued to touch his pants near his genital area while in school.
18. The claimant subsequently felt like the Unit Aide Teacher, the Adjustment Counselor, and the Assistant Principal were retaliating against the claimant for complaining that the student was touching himself outside of his pants near his genital area and were not hearing the claimant's concerns.
19. The claimant subsequently decided to complain to the Principal about the student touching his pants near his genital area while in school and feeling retaliated against by her coworkers.
20. On February 27, 2025, the claimant sent the Principal an e-mail requesting to meet with the Principal. On February 27, 2025, the Principal sent the claimant an e-mail setting up a meeting for Friday February 28, 2025.
21. On Friday February 28, 2025, the Principal and the claimant had an in-person meeting. During the meeting, the claimant complained to the Principal that the claimant felt uncomfortable that the student was touching his pants near his

genital area while in school and that the claimant felt she was being retaliated [sic] by the Unit Aide Teacher, the Adjustment Counselor, and the Assistant Principal after the claimant had complained to them about feeling concerned about the student touching his pants outside his genital area while at school and that the claimant felt that she was not being heard. In response to the claimant's complaints surrounding the claimant being concerned about the student touching his pants outside his genital area while at school and feeling retaliated [sic] by co-workers for reporting the concerns about the student, the Principal informed the claimant to give the Principal one week to investigate the situation and also suggested possible resolutions of moving the claimant to another student assignment as the employer has many paraprofessionals available for the school year.

22. After meeting with the claimant on Friday February 28, 2025, the Principal was planning on investigating the claimant's concerns regarding the student touching his pants near his genital area while in school, and the claimant feeling retaliated [sic] by her co-workers. In the Principal's experience, sometimes Special Education Students start to feel too comfortable while working too long with the same one-on-one staff member, and the Principal was going to explore if this student was at the point to be removed from a one-to-one learning environment.
23. The next business day for the employer after Friday February 28, 2025, was Monday March 3, 2025.
24. On Saturday March 1, 2025, at 11:49 p.m., the claimant sent the Principal an e-mail resigning from her job position effective immediately.
25. On Monday March 3, 2025, at 6:50 a.m., the Principal sent the claimant the following e-mail: "Thank you for sharing your thoughts and for being open about your experience on Friday. I'm truly sorry to hear that things have reached this point and that you weren't able to give me some time to look into this situation. I wish you the best moving forward. If you can reach out to me today on my cell [cell phone number] so we can create a plan for you to return keys, etc. If there's anything we can do to help please don't hesitate to reach out."
26. The Principal did not have the opportunity to investigate the claimant's complaints about feeling uncomfortable by the special education student touching his pants outside of genital area at school making the claimant feel uncomfortable or the claimant feeling retaliated [sic] by her co-workers for complaining about the behavior of the special education student, as the Principal has [sic] asked the claimant to give the claimant a week to look into the matter after the Principal had met with the claimant on Friday February 28, 2025, and the claimant resigned on Saturday March 1, 2025 from the job position.

27. The claimant resigned from her job at the employer's establishment because the claimant felt uncomfortable and unsafe by her assigned One-on-One Special Education student touching his pants near his genital area while at school and felt retaliated [sic] by her co-workers after complaining to the employer about the behavior of the student.
28. The claimant filed an initial unemployment claim effective the week ending April 12, 2025.
29. September 22, 2025, the Department of Unemployment Assistance issued a Determination denying the claimant benefits under Section 25(e)(1) of the Law commencing the week ending April 12, 2025, and until she met the requalifying provisions of the Law. In response to the Determination, the claimant appealed.

### 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 # 11 that states that the claimant was unsure whether the student was just adjusting himself as inconsistent with the claimant's uncontested testimony. 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 not entitled to benefits.

As the claimant resigned from her employment, this case is properly analyzed under the following provisions of G.L. c. 151A, § 25(e), which provide, in pertinent part, as follows:

[No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter] . . . (e) For the period of unemployment next ensuing . . . after the individual has left work (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

In this case, the claimant resigned her position because she felt uncomfortable and unsafe at work, as the student she was supervising was touching his pants near his genital area while she was working with him. Findings of Fact ## 10–12, 15, 16, 17, and 27. Although the reason(s) for the student's behavior are unknown, the testimony and findings of fact do raise a question as to whether his conduct was sexual in nature. 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 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, requests for sexual favors, and other verbal or 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. The department shall promulgate regulations necessary to carry out the provisions of this paragraph.

The DUA regulation at 430 CMR 4.04(5), 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.

Further, 430 CMR 4.04(5), 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 . . .

b. In the case of a non-employee, the Division will consider the extent of the employer's control over the non-employee's conduct.

(d) In determining whether a claimant’s reason 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 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.

It is apparent from the findings that the claimant quit because she felt that the employer was not adequately addressing her complaints about the inappropriate behaviors of the student that she was assigned to work with on a one-on-one basis. *See* Finding of Fact # 27. When a claimant contends that the separation was for good cause attributable to the employer, the focus is on the employer's conduct, not the claimant's personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

From this record, we cannot infer the student's reasons for engaging in this conduct. *See* Finding of Fact # 11. However, the student did take steps to conceal his actions from others by covering his genital area with his laptop. Finding of Fact # 10. During the hearing, the claimant explained that she considered that the student may have just been adjusting his clothes but ultimately concluded otherwise because he continued to touch his genital area in the claimant's presence and would remove his hand if another teacher approached.<sup>1</sup> Based on this, the claimant believed that the student's actions were unrelated to his anxiety. Finding of Fact # 11.

The language of 430 CMR 4.04(5)(a)(2)(c), specifies that conduct will be considered to be sexual harassment if it has the purpose *or effect* of creating an intimidating, hostile, humiliating, or sexually offensive work environment. In this case, because the claimant could not identify another cause for the claimant's repeated touching of his genital area, she could reasonably infer that his conduct was both sexual in nature and related to the student's interactions with the claimant. Inasmuch as the review examiner found that the student's ongoing actions made the claimant feel uncomfortable and unsafe, the claimant has shown that his conduct had the effect of creating an intimidating, humiliating, or sexually offensive work environment. *See* Findings of Fact ## 10, 16, and 27.

Because the student was not an employee or agent of the instant employer, we must next assess the extent to which the employer exercised control over the student's conduct. 430 CMR 4.04(5)(c)(b). The employer's witness, its Principal, explained that the employer had dealt with similar conduct before, that it was her practice to work with teachers and adjustment counselors to address the students' inappropriate behavior, and considered that it may be time to assign him a different paraprofessional to work with or to remove the student's one-on-one aide supervision. *See* Findings of Fact ## 21 and 22.<sup>2</sup> Thus, it appears that the employer had the resources and ability to take steps to exercise control over the student's conduct.

In this case, the findings of fact confirm that the employer also knew of the student's conduct well before the date of the claimant's resignation. The claimant informed both the student's Unit Aid Teacher and his Adjustment Counselor of her concerns in October or November of 2024. Findings of Fact ## 11, 14, and 16. Although the employer's principal identified both of these individuals as the employees responsible for addressing such behavior in the school environment, the review examiner found that neither took steps to address the claimant's concerns. Findings of Fact ## 7, 8, 14. Because the employer was aware that the student's conduct was making the claimant feel

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<sup>1</sup> The claimant's testimony in this regard, although not explicitly incorporated into the review examiner's findings of fact, 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).

<sup>2</sup> The employer's witness's testimony in this regard is also part of the unchallenged evidence introduced at the hearing and placed into the record.

uncomfortable and unsafe, and as it had the ability to exercise control over the student's actions, the claimant has met her burden to show that she resigned for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1), and 430 CMR 4.04(5)(c).

Although the claimant did report her concerns to the employer's Principal, she resigned before the employer had the opportunity to investigate her complaints. Findings of Fact ## 22–26. Ordinarily, to meet her burden to show good cause attributable to the employer, a claimant must also show that she made a reasonable effort to correct the situation before leaving. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). However, the Massachusetts Appeals Court has held that, in cases involving allegations of sexual harassment, a claimant need not show that she took all, or even reasonable, steps to preserve her employment. Tri-County Youth Programs, Inc. v. Acting Deputy Dir. of Division of Employment and Training, 54 Mass. App. Ct. 405, 410–411 (2002). Therefore, she may not be disqualified for failing to wait for the employer to conduct its investigation. See Board of Review Decision 0052 8999 53 (Oct. 28, 2022).

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 pursuant to G.L. c. 151A § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 12, 2025, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 18, 2026**



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.

LSW/rh