



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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**BOARD OF REVIEW
DECISION**

In the matter of:

Appeal number: **BR-118451**

CLAIMANT APPELLANT:

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~
West Roxbury, MA 02132-6017

EMPLOYING UNIT:

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

S.S. # XXX-XX-~~XXXX~~
Hearings Docket # 571555

EMP. # ~~XXXXXXXXXX~~

Introduction and Procedural History of this Appeal

The claimant appeals a decision by James Collins, a review examiner of the Division 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 her position with the employer on November 9, 2010. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 8, 2010. 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 March 29, 2011. 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 more fully examine the reasons leading to claimant's separation from her employment. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the claimant had good cause attributable to the employer when she resigned after she was suspended without pay for not having done something that the employer allegedly told her she didn't need to do and was given a lengthy "performance improvement plan" upon her return to work.

Findings of Fact

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

1. The claimant worked for the employer as a business coordinator from April 15, 2008, until November 9, 2010, when she quit employment.
2. The claimant worked full time, Monday to Friday, from 9 am to 5 pm.
3. The claimant quit employment because she was unhappy with a one-day suspension that she had received on October 21, 2010, and with the performance improvement plan that was presented to her on November 9, 2010.
4. As business coordinator, the claimant's primary responsibilities included administrative operations, fiscal management, contract and data management, administrative support, and miscellaneous, including "performs other tasks as required to support and maximize [the employer's] programs and services."
5. As part of her fiscal management responsibilities, the claimant monitored purchasing and inventory systems. In doing this, the claimant frequently ran errands by going to the store to purchase supplies and other items for the employer.
6. The claimant's immediate supervisor from April 2009 to the end of her employment was the assistant VP of housing and family mobility (AVP).
7. The employer had a contract with a cleaning service to clean its offices regularly.
8. The employer asked the claimant to clean an office on only one occasion, when eight different offices, including the claimant's, were being shifted around. This was a one-time event, and everyone was asked to pitch in.
9. The claimant covered the front desk and floors, when needed.

10. The AVP had asked the claimant to cook lunch one or two times. The AVP did this only because the claimant had told her that she liked to cook and the claimant had told her afterwards that she had enjoyed cooking lunch.
11. On October 20, 2010, the AVP was away for the day. By email, she requested the claimant to cover for her that day, including doing a scheduled safety inspection. Because she had never done a safety inspection before, she called a safety committee member, the food services director, and asked him what was involved in a safety inspection. He responded that he would come to the claimant's office and explain. Shortly later, the claimant ran into the food services director. He told her that she did not need to do the safety inspection that day; that he would cover for her; and, that he, the facilities director, and the HRVP would do the safety inspection.
12. The employer did not investigate the reason for the claimant's failure to assist with the safety inspection on October 20, 2010. The employer relied solely on the facilities director's representation that the claimant had refused to do the safety inspection, and the reason did not matter since the safety inspection was a simple, routine task, using a checklist. The facilities director did not testify at the hearing. The AVP did not speak with the food services director about why the claimant had not done the safety inspection, because the AVP was not aware that he was involved.
13. On October 21, 2010, the claimant reported to work at 9 am, as scheduled. At 10 am, the claimant met with her supervisor and the HRVP. At that time, the employer gave the claimant a one-day suspension, to be served on October 27, 2010, "for failure to comply with [her supervisor's] directions of assisting with the safety inspections at 10 am on October 20, 2010." The meeting lasted about thirty minutes. At about 11 am, the claimant informed her supervisor and the HRVP that she was leaving because she did not feel well following the supervision meeting earlier that morning. The AVP asked the claimant not to leave. The claimant left work.
14. On Friday, October 22, the claimant called work at about 8:45 am and asked the receptionist to tell the AVP that she was not feeling well due to stress and would not be coming to work. The claimant did not indicate when she might be feeling better or when she might be returning to work.
15. The claimant did not report to work during the week of October 25, 2010.
16. The employer tried its best to get the claimant to return to work during the weeks of October 25 and November 1, 2010.

17. On November 2, 2010, the claimant went to see a psychologist due to the stress she was feeling from work. This was the first time that the claimant had sought medical treatment for stress. The psychologist did not advise the claimant to leave her job.
18. By Friday, November 5, 2010, it was understood by the claimant and the employer that the claimant would be returning to work on November 9, and that she would meet with her supervisor and the HRVP at 9 am, when she reported to work.
19. On November 9, 2010, the claimant reported to work for the first time since leaving work early on October 21. The claimant met with her supervisor and the HRVP soon after arriving at work. The meeting lasted about fifteen minutes. At the start of the meeting, the claimant was given a letter from the HRVP, dated November 8, 2010, and a performance improvement plan (PIP) from the AVP, dated November 8, 2010. The claimant read both documents. The AVP then began reviewing the PIP with the claimant. The PIP was four pages. The PIP identified four areas of concern—communication and problem-solving; customer service skills, data management, and professionalism—and reviewed how the AVP felt that the claimant's performance had been substandard in the areas in the past. The PIP included a section for the claimant's name and signature and for the AVP's signature. The AVP did most of the talking for the employer. The AVP was unable to finish her presentation of the PIP, because the claimant became upset immediately and interrupted the AVP repeatedly as the AVP reviewed specific issues that she had with the claimant's performance. The claimant was upset because she did not think that her supervisor was being accurate in stating what had happened or fair in criticizing her performance. The claimant began arguing with the AVP and at some point got up and went to the door to leave, before the meeting had concluded. The AVP asked the claimant to stay. The claimant refused and left. Neither the AVP nor the HRVP told the claimant at the meeting that she had to sign the PIP if she wanted to return to work. The AVP had not completed her review of the PIP with the claimant, when the claimant left work.
20. The employer had a disciplinary policy. The policy provided for a progressive disciplinary procedure. There was no mention of "suspension" in the progressive disciplinary procedure. The procedure provided for oral counseling, first written warning, second and final written warning, and dismissal. Suspension was mentioned only in the "Investigations and Suspensions" section of the disciplinary policy. In part, the section stated: "When an investigation is needed to determine the actual events of an alleged violation of organization rules, the employee in question may be suspended

(with or without pay) at the organization's discretion while the investigation is completed." The disciplinary policy was contained in the employee handbook, and all employees, including the claimant, received a copy of the handbook at hire. The claimant received her copy on April 16, 2008.

21. The claimant's suspension was not consistent with the employer's disciplinary policy.
22. Prior to receiving the employer's performance improvement plan on November 9, 2010, the claimant had never received any written warnings for the performance areas "in need of immediate correction and improvement," as stated in the PIP. Some of these performance areas were mentioned in the 10/21/2010 suspension letter.
23. The employer never disciplined the claimant during her employment pursuant to the employer's disciplinary policy.
24. The only time that the employer disciplined the claimant was on October 21, 2010, when the employer suspended the claimant.
25. The claimant felt that the AVP harassed her at work for several reasons. The AVP would call her "difficult" and "stubborn" and tell the claimant "you creative people are all the same." The AVP had closed her door in the claimant's face. The AVP would not invite the claimant to meetings and celebrations. The AVP referred to her sometimes as her "assistant."

Ruling of the Board

The Board adopts the review examiner's consolidated findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 25(e)(1), provides, in pertinent part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter 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 . . .

Under G.L. c. 151A, § 25(e)(1), it is the claimant's burden to establish that she left work for good cause attributable to the employer. After the initial hearing the review examiner concluded that the claimant had not met her burden. We remanded the case for additional evidence

regarding the reasons for the claimant's separation from her employment. Following remand, we conclude that the claimant voluntarily left her employment with good cause and that the claimant has met her burden.

The review examiner's findings establish that the claimant received an unreasonable, unpaid suspension from work, and that the suspension was inconsistent with the employer's disciplinary policy. The claimant was asked by her supervisor, the Assistant Vice President of Housing and Family Mobility (AVP), to cover for her to do a scheduled safety inspection on October 20, 2010; since the claimant had never done a safety inspection before, she called the food safety director and asked him what was involved in the safety inspection. He said he would come to her office and explain. Soon after their conversation, the claimant ran into the food safety director and he told her that she didn't need to do the safety inspection and that he would cover for her and that he and the facilities director and the Vice-President of Human Resources (HRVP) would do the safety inspection.

However, notwithstanding the fact that the claimant was told she didn't have to do the inspection, the claimant received a one-day suspension for failure to comply with her supervisor's direction to assist with the food safety inspection. The review examiner found that the employer did not investigate the reason for the claimant's failure to assist with the safety inspection prior to imposing this discipline. The claimant had never been disciplined by the employer previously. Moreover, the employer's progressive discipline policy does not include "suspension" as a disciplinary step. The claimant became upset and told her supervisor that she was leaving after the meeting ended. The next day, the claimant called the employer and said that she would not be reporting to work because she was not feeling well due to stress. She did not report to work during the weeks of October 25, and November 1, 2010, and went to see a psychologist on November 2, 2010 because of work-related stress.

On November 9, 2010, the claimant reported to work and met with her supervisor and the Human Resources Vice-President. The claimant was given a letter and a four page performance improvement plan that identified four areas of concern and reviewed how the supervisor felt that the claimant's performance had been substandard in the areas in the past. The claimant became immediately upset because she didn't think her supervisor was being accurate or fair. The claimant left before the meeting was concluded. The review examiner found that the claimant never previously received any indications that her performance was deficient in any of the performance areas characterized as being "in need of immediate correction and improvement" in the employer's performance improvement plan.

We reach the conclusion that, in the matters of the unpaid suspension and the "performance improvement plan," the claimant was being treated unreasonably by the employer and that the claimant, therefore, had good cause for leaving work.

We, therefore, conclude as a matter of law that the claimant left work for good cause attributable to the employer.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending October 30, 2010 and for subsequent weeks if otherwise eligible.



John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - July 15, 2011



Sandor J. Zapolin
Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

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

LAST DAY TO FILE AN APPEAL IN COURT – August 15, 2011

SE/rh

