

The employer's 25% reduction in hours, which meant that the claimant lost some benefits, created good cause for the claimant to resign, after she requested several times for the hours to be restored to her.

Board of Review  
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Issue ID: 0018 8939 61

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by Elizabete Trelegan, 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 her position with the employer on June 8, 2016. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on August 19, 2016. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on November 24, 2016.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer 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 accepted the claimant's application for review and 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 conclusion that the claimant did not resign her job for good cause attributable to the employer, pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the employer reduced the claimant's hours from 20 per week to 15 per week and did not increase them again, even after the claimant asked for them to be increased back to the original 20 hours.

### Findings of Fact

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

1. The claimant began working for the employer on March 12, 1986.

2. The claimant worked part time as a prenatal case manager for the employer's family medical practice. The claimant earned \$33.00 per hour. Prior to September 2015, the claimant worked 20 hours per week. Since September 2015, the claimant worked 15 hours per week. The claimant had no other employment during this time.
3. A part time employee that worked 20 hours per week was eligible for vacation and sick time, health/dental benefits, and life insurance.
4. A part time employee that worked less than 20 hours per week was not eligible for vacation time, health/dental benefits, or life insurance. They were eligible for sick time in accordance with the law.
5. The claimant is 70 years old.
6. On September 8, 2016, staff, including the claimant, was sent an email stating that four positions were eliminated and other positions were reduced in hours.
7. In September 2015, the claimant's hours were reduced from 20 hours per week to 15 hours per week because of funding.
8. The claimant's co-worker, who also worked in the prenatal department, had her hours reduced.
9. A full time employee that worked in a different department was given 24 hours per week to work in the prenatal program. The employer gave the employee 24 hours of work each week in the prenatal program to ensure the employee received 40 hours. The employee was not given hours in addition to the 40 hours she worked. She was not a new [hire].
10. On or about April 19, 2016, the claimant met with the Vice President and a doctor. The meeting was scheduled as a result of an email the claimant sent to the Vice President about the claimant feeling bullied and harassed. The Vice President asked the claimant to provide incidents of when the claimant was bullied or harassed. The claimant could not give specific information. The claimant stated she did not want to work under a specific physician and wanted her hours to be increased to 20 hours per week. The Vice President informed the claimant that the prenatal program needed to be restructured and services needed to be increased in the program to bring in revenue before the claimant's hours would be increased. The Vice President suggested the claimant assist with outreach to bring in additional revenue to the program.
11. The following week, the claimant asked the Vice President if the claimant's hours would be increased to 20 hours. The Vice President stated that the claimant's hours could not be increased and suggested the claimant assist the prenatal program to bring in more revenue.

12. Approximately two weeks later, the claimant asked the Vice President about the increase in hours. The Vice President stated the claimant's hours would not be increased.
13. The Vice President never gave the claimant a timeline as to when the claimant's hours would be increased to 20 hours per week.
14. In May 2016, the Vice President had a discussion with a Board Member regarding the claimant's hours. The Board Member expressed the claimant's desire to increase her hours to 20 hours per week. The Vice President did not guarantee to the Board Member that the claimant's hours would be increased to 20 hours per week or that she would be assigned to work under the Senior Director of Program Improvement.
15. Approximately one week prior to May 18, 2016, the Board Member informed the claimant that the claimant's hours would be increased to 20 hours.
16. On May 18, 2016, the Board Member told the claimant that the claimant's hours would be increased to 20 hours per week and that the claimant would work under the Senior Director of Program Improvement. The Board Member told the claimant to speak to the Vice President.
17. After speaking to the Board Member, the claimant did not attempt to speak to the Senior Director of Program Improvement or Vice President about the claimant's schedule or if the claimant would be working under the Senior Director of Program Improvement.
18. On May 19, 2016, the claimant submitted her written resignation to the physician, effective June 8, 2016. The reason the claimant quit her employment was because she was dissatisfied that the employer did not increase the claimant's hours when the claimant requested her hours be increased.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude, contrary to the review examiner, that the claimant did establish that she had good cause for quitting her position with the employer and is not disqualified from benefits.

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] . . . (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 . . . .

Under this section of law, the claimant has the burden to show that she is eligible to receive unemployment benefits. The review examiner concluded that the claimant did not meet her burden. We disagree.

The review examiner found that the claimant quit her employment over a dispute related to the amount of hours she was working. *See* Finding of Fact # 18. The employer hired the claimant to be a part-time employee, working 20 hours per week. *See* Finding of Fact # 2. Working 20 hours per week entitled the claimant to benefits, including vacation time, sick time, health/dental coverage, and life insurance. *See* Findings of Fact # 3. Although hired to work 20 hours per week, in September of 2015, the claimant's hours were reduced to 15 per week. The reduction was due to funding issues that the employer was experiencing. *See* Finding of Fact # 7. Since the claimant's hours were reduced to below 20 per week, she also lost the benefits associated with working at least 20 hours per week. *See* Finding of Fact # 4. The claimant requested that her hours be increased back up to 20. She was given various responses, but the five hours were never returned to her. *See* Findings of Fact ## 10–16.

Since the review examiner found that the claimant resigned over the issue with the hours, we are confronted with the question of whether the employer's reduction in the claimant's hours from 20 to 15 created a reasonable workplace complaint that might give her good cause for quitting attributable to the employer. The review examiner concluded that this was not a reasonable workplace complaint. She noted that "[t]he employer is free to make a business decision to reduce an employee's hours." She further noted that the claimant had worked the reduced hours since September of 2015, and complained about the reduction in April of 2016. The review examiner then concluded that, "[a]lthough the claimant wanted her hours to be increased to 20 hours, the employer did not have to grant the claimant's request."

While we agree with the review examiner that the employer may reduce an employee's hours as it wishes, it does not necessarily follow that such a reduction cannot create good cause to resign. Even a legitimate business decision (here, reducing the claimant's hours because of funding problems) can give a claimant good cause for quitting, as shown by prior Board decisions and settled case law. A reasonable business decision by an employer to make a substantial change to a claimant's hours, pay, or benefits could create good cause to resign, because it renders the job no longer suitable to work. *See Graves v. Dir. of Division of Employment Security*, 384 Mass. 766 (1981) (substantial decline in wages may render job unsuitable). Applying *Graves*, we have held that an employer's drastic reduction in a claimant's hours rendered her position *per se* unsuitable. *See* Board of Review Decision BR-110763 (March 28, 2010) (claimant's hours cut in half). Under such circumstances, the employer unilaterally changes the fundamental conditions of a person's employment relationship. The Appeals Court has also laid out a useful measure of what kind of reduction can be deemed to be "substantial." *See North Shore AIDS Health Project v. Rushton*, No. 04-P-503, 2005 WL 3303901 (Mass. App. Ct. Dec. 6, 2005), *summary decision pursuant to rule 1:28* (a 15% reduction in claimant's total compensation package created good cause for her leaving employment). Here, the claimant's hours were

reduced by 25%. Such a large reduction brings the circumstance within the ambit of “good cause,” for purposes of the unemployment law.

In her conclusion, the review examiner implies that the claimant acquiesced to the reduction in hours. She noted that the reduction occurred in September of 2015, and the claimant worked until April of 2016 before complaining about this. *Compare Kowalski v. Dir. of Division of Employment Security*, 391 Mass. 1005 (1984) (claimant who tolerated harassment for over one year and made no efforts to correct the alleged problem not allowed benefits). Waiting a lengthy period of time could suggest that a claimant is not really quitting for the reason asserted. Here, however, the claimant did make her objection to the reduction known to the employer prior to quitting her job. In addition, the review examiner specifically found that the claimant quit due to the reduced hours. *See* Finding of Fact # 18. Given this finding and the claimant’s complaints, as well as the Legislature’s mandate that we interpret the provisions Chapter 151A liberally, *see* G.L. c. 151A, § 74, we conclude that the claimant has shown a reasonable workplace complaint in the 25% reduction to her weekly hours.

Although not explicitly noted in her conclusion, the review examiner further appears to conclude that the claimant did not make reasonable efforts at preserving her employment. *See Kowalski*, 391 Mass. at 1006. Such a requirement has been held to be a pre-requisite to showing that a person was reasonable in quitting her job, unless it would have been futile to continue preservation efforts. *See Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93–94 (1984). Here, the review examiner found that the claimant spoke with the employer several times about increasing her hours. Yet, the hours were never increased back to 20 per week. The review examiner acknowledged in her conclusion that “the claimant was not given a deadline as to when her hours would increase.” Thus, the reduction was indefinite. The review examiner also noted in her conclusion the following:

The claimant also believed her hours would be increased to 20 hours per week after a conversation with a Board Member prior to May 18, 2016, however, rather than confirming the conversation with the Senior Director of Program Improvement or Vice President, the claimant quit her employment.

The examiner faults the claimant for not confirming with someone other than a Board Member whether her hours would increase. However, the review examiner already found that the Vice President had told the claimant several times that there was no plan to increase the claimant’s hours to 20 per week again. *See* Findings of Fact ##11, 12, and 14. Indeed, the Vice President did not even tell the Board Member that the claimant’s hours would increase. The review examiner found that that, in May of 2016, the Board Member “expressed [to the Vice President] the claimant’s desire to increase her hours to 20 hours per week. The Vice President did not guarantee to the Board Member that the claimant’s hours would be increased . . . .” It is not clear why, then, the Board Member went to the claimant and affirmatively told her that her hours “would be increased to 20 hours per week.” *Compare* Findings of Fact ##14, 15, and 16. None of the findings indicate that there was any plan to increase the claimant’s hours back to 20 per week. The claimant reasonably concluded that further efforts at speaking with management would have been futile.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits, pursuant to G.L. c. 151A, § 25(e)(1), is not based upon substantial and credible evidence in the record or free from error of law, because the employer's reduction of the claimant's hours from 20 to 15 per week, and the claimant's unsuccessful efforts at getting the employer to increase the hours back to 20 per week, created good cause attributable to the employer for resigning her position.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning June 5, 2016, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – February 22, 2017**



Judith M. Neumann, Esq.  
Member



Charlene A. Stawicki, Esq.  
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT COURT OR TO THE BOSTON MUNICIPAL 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.

SF/rh