Where a claimant was dissatisfied with the number of hours she was working following the birth of her child, her quitting was not for good cause attributable to the employer, because the employer was offering the claimant part-time hours in accord with the hiring agreement, a reduction in hours after the holidays was temporary only, and the claimant contributed to her lack of hours by calling out from work for several shifts just prior to her separation.

Board of Review
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Issue ID: 0021 6863 17

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Lauren Johnson, 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 affirm.

The claimant separated from her position with the employer in early March of 2017. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on May 24, 2017. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on August 19, 2017.

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 from receiving benefits 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 remanded the case to the review examiner to allow the claimant an opportunity to provide evidence. Both parties attended the two-day remand hearing. 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 conclusion that the claimant is subject to disqualification, 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 claimant quit due to her dissatisfaction with the number of hours she worked, despite being hired for only part-time hours.

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 part-time as a sales associate for the employer, a non-profit retail store, from May 2016 until early March 2017.

2. The claimant's supervisor was the employer's store manager ("manager").

3. At the time of hire, the claimant was aware that she was hired as a part-time employee and that she could be given 20 hours or less per week. At no time was the claimant promised a minimum number of hours.

4. However, when the claimant first began working for the employer she was working more than 20 hours per week. Around August 2016, a representative from the employer's human resources (HR) department [met] with the claimant to go over benefits. During this meeting, the claimant was advised of her benefits and informed that although she was working more than 20 hours she was still considered a part-time employee and was not entitled to full-time benefits.

5. Thereafter, the claimant's hours were reduced to part-time.

6. Prior to her separation, the claimant was scheduled for an average of 18 hours per week at a rate of $11.00 per hour. Employees' shifts were scheduled two weeks in advance based upon the employees' availability. Sales associates were allowed to pick up additional shifts at their location as well as at the employer's other locations when they became available.

7. The manager would notify employees individually or during a staff meeting if shifts at other locations become available. The claimant picked up shifts at the employer's [City A], MA and [City B], MA locations. The employer's [City A], MA location was a further commute for the claimant. The claimant preferred to work for the employer at the alternative locations because she liked the management at those locations.

8. The claimant lives in [City C], MA. At the time of separation, the claimant was working at the employer's location on [Street Name], in [City D], MA.

9. On most days, the claimant took public transportation to get to work. Using public transportation, it took the claimant 45 minutes to an hour to get to work and cost about $5.00. Occasionally, the claimant took a taxi to get to work. Using a taxi, it took the claimant about 15 minutes to get to work and cost between $20-$25.

10. In early October 2017, the claimant wanted to quit her job because of the commute to work. The employer recommended that rather than quitting, the

claimant take a maternity leave. The claimant was due to give birth in late October 2017.

11. The claimant's maternity leave was approved by the employer's HR department, from mid-October 2017 until the end of December 2017. The exact dates of the claimant's maternity leave are unknown.

12. The claimant returned to work from her maternity leave in mid-December 2017.

13. During the week ending December 17, 2016, the claimant worked 5 hours. The number of hours the claimant was scheduled for during this week is unknown.

14. During the week ending December 24, 2016, the claimant worked 35.92 hours. The number of hours the claimant was scheduled for during this week is unknown.

15. During the week ending December 31, 2016, the claimant worked 24.17 hours. The number of hours the claimant was scheduled for during this week is unknown.

16. After the holiday, the employer notified its employees that there would be a temporary reduction in hours following the holiday season. The temporary reduction was going to last until the beginning of February 2017. The employer did not notify its employees that they may have been eligible for partial unemployment benefits during that time.

17. During the week ending January 7, 2017, the claimant was scheduled to work 23.75 hours. The claimant worked 21.25 hours because she was late to work on two days.

18. During the week ending January 14, 2017, the claimant was scheduled to work 13.5 hours. The claimant only worked 12.75 hours because she gave away an hour to another associate.

19. During the week ending January 21, 2017, the claimant was scheduled to work 15 hours. The claimant only worked 7.75 hours because she called out sick one day.

20. During the week ending January 28, 2017, the claimant was scheduled to work 15 hours. The claimant worked all scheduled hours.

21. During the week ending February 4, 2017, the claimant was scheduled to work 10.5 hours. The claimant worked all scheduled hours.

22. During the week ending February 11, 2017, the claimant was scheduled to work 19 hours. The claimant only [worked] 13.75 hours and was a no call, no show on February 9, 2017, because she could not find childcare. The claimant's aunt, whom she lives with, usually watches the claimant's daughter while the claimant is at work.

23. During the week ending February 18, 2017, the claimant was scheduled to work 15.5 hours. The claimant worked 15.25 hours because she was late to work one day.

24. During the week ending February 25, 2017, the claimant was scheduled to work 23 hours. The claimant only worked 19 hours, she called out of work on February 23, 2017, because she was sick.

25. After the claimant's maternity leave and prior to her resignation, the claimant did not pick up any extra shifts.

26. After the claimant's maternity leave and prior to her resignation, the claimant did not request to work at the employer's other locations.

27. After the claimant's maternity leave and prior to her resignation, the claimant did not ask for a transfer to another location.

28. On February 24, 2017, the claimant informed the manager that she was quitting. After that, the claimant asked the manager if she was sure there were no open positions she could transfer to. The claimant wanted to transfer locations because she liked the management better at the employer's other locations. The manager told that claimant that there were no positions available and asked the claimant for a resignation letter.

29. In fact, the employer did have store associate positions available at its other locations, including the locations the claimant had worked at in the past. In order to apply for a transfer, an employee must complete an internal application and meet with the hiring manager of the location in which they wish to transfer too. The claimant was unaware of the process for requesting a transfer.

30. In the claimant's resignation letter she indicated that she was quitting "in order to seek a more convenient work place." The claimant also indicated that her last day of work for the employer would be March 11, 2017.

31. In her resignation letter, the claimant did not indicate that she was quitting due to the employer not giving her enough hours because she quickly wrote her resignation letter, trying not to be negative, and did not put a lot of time into drafting it.

32. The claimant quit her position because she had "no desire to be in the location that she was at" and because she was dissatisfied with the wages she was earning because of the number of hours she was working.

33. The claimant would not have quit had she been given a transfer to one of the employer's other locations. The claimant would have transferred to one of the employer's location with a further commuting distance.

34. Convenience was not factor in the claimant quitting her job.

35. During the week ending March 4, 2017, the claimant was scheduled to work 19.5 hours. The claimant only worked 9.75 hours because she called out of work on February 27, 2017 and March 3, 2017 as her daughter was sick.

36. During the week ending March 11, 2017, the claimant worked 12.25 hour. The number of hours the claimant was scheduled for during this week is unknown.

37. The claimant's last day of work for the employer was on or around March 6, 2017.

38. The claimant filed a claim for unemployment benefits effective April 23, 2017.

39. On May 1, 2017, the employer indicated in a DUA questionnaire that the claimant stated her reason for quitting her employment was to "seek a more convenient work place" and "she was in the process of getting a better paying job."

40. On June 6, 2017, the claimant indicated in a DUA questionnaire that she did not have an offer of employment from another employer at the time of her last day of work with the instant employer nor did she ever begin to work for another employer.

CREDIBILITY ASSESSMENT

In this case, the claimant gave vague and inconsistent testimony regarding several aspects of her employment. First, the claimant could not recall the dates of her maternity leave. The claimant testified that she returned to work for the employer around December 24, 2017. The claimant's pay stubs — which were submitted by the employer — indicate that she returned to work in mid-December 2017. Second, the claimant originally testified that she did not miss work that she was scheduled for. However, during her later testimony, the claimant admitted to missing work consistently, after she returned from her maternity leave, for various personal reasons. Finally, the claimant originally testified that she was not scheduled to work in March 2017. Again, through later testimony the claimant admitted to being scheduled to work in March 2017 but calling out of work. The

claimant's pay stubs demonstrate that the claimant did in fact work during early March 2017.

In addition, the claimant gave various reasons for quitting her employment. The claimant first indicated that she quit due to a reduction in hours. However, through evidence and the claimant's own testimony, there was no reduction in the number of hours the claimant was scheduled. Rather, the claimant was not working all of the hours given to her, by the employer, for various personal reasons. The claimant also cited her commute as a factor in quitting. At no time during the claimant's employment did her commute to work change. Further, the claimant testified that she would have transferred to one of the employer's locations with a further commuting distance because she liked management better at the other locations. Based on the above, the claimant's testimony regarding her reasons for quitting, specifically the reduction in hours and the commute, are not credible.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment, with the exception of the number of hours noted in Consolidated Finding of Fact # 6. The employer's witnesses as well as Exhibit # 13 indicate that the claimant averaged seventeen hours per week just prior to her separation. It appears that the error in the finding may have been typographical in nature. We also interpret Consolidated Finding of Fact # 5 to mean that, after several months of working a larger number of hours, the claimant's schedule was reduced to twenty hours or less. Nowhere in the findings did the review examiner find that the claimant worked full-time; she simply found that she was working more than twenty hours per week in Consolidated Finding of Fact # 4. We accept Consolidated Finding of Fact # 5 with this understanding. We further note that several of the review examiner's findings of fact, as well as the credibility assessment, include references to an incorrect year. These appear to have been typographical errors. Consolidated Findings of Fact ## 10, 11, 12, and the credibility assessment refer to dates in October and December of 2017. This should actually be 2016. As to the rest of the findings, the Board deems them to be supported by substantial and credible evidence. As discussed more fully below, we conclude that the review examiner's conclusion disqualifying the claimant from receiving benefits is supported by the record and reasonable in relation to the evidence presented.

It was undisputed that the claimant submitted her resignation to the employer on February 24, 2017. Because the claimant's separation was voluntary, we analyze her eligibility for benefits pursuant to G.L. c. 151A, § 25(e), 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.

Under these statutory provisions, the claimant has the burden to show that she is eligible to receive unemployment benefits. After the initial hearing, at which the claimant did not attend, the review examiner concluded that the claimant had not carried her burden. Following our review of the entire record, including the testimony of both parties from the remand hearing, we agree with that assessment of the evidence.

The first issue to be addressed is why the claimant resigned her position. The review examiner noted in her credibility assessment that the claimant gave various reasons for quitting. Eventually, the review examiner narrowed down the reason for the resignation to the claimant's "dissatisf[action] with the wages she was earning because of the number of hours she was working." Consolidated Finding of Fact # 32. This reason for the resignation is supported by the record. Although the claimant mentioned that the commute from her home in [City C] to her work location in [City D] was long, she testified that she would have worked at a location in [City A] which was further from her home. Thus, the commute could not have been the motivating factor behind the separation. Although the claimant had a child in the fall of 2016, she testified that she had sufficient childcare for her to take on even more shifts than she was already working. Therefore, problems with childcare did not force the claimant to quit her job. Indeed, the overarching argument the claimant was making during the hearing was that she had initially worked a lot of hours, and then those hours were reduced after she returned from maternity leave in December of 2016. Thus, we proceed with the claimant's reason for resignation being that she was dissatisfied with the hours she was working (and, consequently, the associated pay she was receiving).

The claimant argued that her hours were reduced by the employer. The consolidated findings of fact indicate, however, that the hours offered to the claimant were in accord with the agreement at hire that the claimant would be working "20 hours per week or less." Consolidated Finding of Fact # 3.[1] Although she was given more than twenty hours of work at the very start of her employment for a few months, this number of hours was not guaranteed to her. *See* Consolidated Findings of Fact ## 3 and 4. Following her return from maternity leave, the claimant worked a few weeks in which her hours were over twenty per week. *See* Consolidated Findings of Fact ## 14, 15, and 17. However, the hours were then reduced until later in February of 2017, when they rebounded back to closer to twenty per week.

From what we can discern from the findings, the employer did not do anything with regard to the claimant's hours which gave her good cause to quit. The employer offered the claimant a schedule which was in accord with what she was promised at hire. Although the hours were

[1] As to what was agreed to at hire, the claimant's testimony was not clear. Initially, she testified that she was supposed to receive twenty hours per week, as this was what was written in the employment application and later expressed to her verbally by the employer. Later, however, when asked again if the employer promised her twenty hours per week, the claimant responded that she was not promised the twenty hours, but that twenty hours per week would be the average. When asked by the review examiner if she knew she could receive less than twenty hours per week, the claimant responded in the affirmative. Thus, the review examiner's findings regarding whether the claimant was ever promised a minimum number of hours are supported by the testimony given by the claimant.

reduced following the holidays in December of 2016, the reduction was temporary. The claimant gave specific testimony that she was told that the reduction would be only through January of 2017. It is a well-accepted DUA policy that a temporary reduction in available work for a claimant does not give rise to good cause to quit a job. *See* DUA Service Representative Handbook, §§ 1220(E) and 1220(F). The Board generally agrees with this principle. Thus, even though the claimant may have had some weeks of work in early 2017 in which the offered hours fell below what she was used to, it was not enough to give her a reasonable workplace complaint. Moreover, as noted by the review examiner in her credibility assessment, part of the reason why the claimant was not working more hours was due to her personal circumstances. She called out of work several times in January of 2017 and in February of 2017. This reduced the number of hours she worked and also reduced the amount of pay she received. Because the employer was offering the claimant hours pursuant to the parties' hiring agreement, and because the reduction in hours in late 2016 and early 2017 was only temporary, the claimant has not shown good cause for quitting her position.

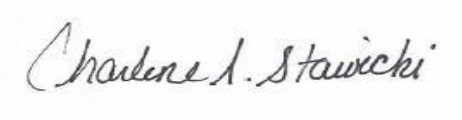
Generally, the purpose of the unemployment statute is to provide temporary relief to persons out of work through no fault of their own. *See* Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion); Cusack v. Dir. of Division of Employment Security, 376 Mass. 96, 98 (1978). In cases such as this, where the claimant is arguing that the employer caused the separation, the focus is on the employer's conduct. *See* Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). As stated above, the employer did not do anything which gave rise to good cause to quit. Additionally, because the claimant did not argue that her separation was due to things beyond her or the employer's control (such as loss of transportation, housing, or childcare), the separation cannot be regarded as involuntary under G.L. c. 151A, § 25(e).

We, therefore, conclude as a matter of law that the review examiner's initial decision to deny benefits, pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence in the record and free from error of law, because the claimant did not carry her burden to show that the employer permanently reduced her work hours or otherwise did not act in accordance with an agreed-upon part-time work schedule.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning March 5, 2017, 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 - February 27, 2018

Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

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

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