

**When the claimant's schedule of hours was reduced by over half, this created good cause for the claimant to resign after she made several complaints to her supervisor about this problem.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0025 0689 09**

## **BOARD OF REVIEW DECISION**

### **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 resigned from her position with the employer on or about November 24, 2017. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 12, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties telephonically, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on July 31, 2018. 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 for 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, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant quit without good cause, where the claimant resigned after the employer significantly reduced her hours of work, 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 for the employer, a donut shop, as a crew member, from April 11, 2017 [u]ntil November 24, 2017. The claimant was paid \$11.00 per hour.
2. About July, 2017, the claimant got a new supervisor (Supervisor A).
3. Until about August/September, 2017, the claimant was scheduled to work about 28 day-time hours each week.
4. The schedule was posted in advance which gave the claimant time to arrange for child care.
5. The claimant, on occasion, volunteered to close the store when scheduled in advance, and worked some evenings closing the store.
6. Beginning August/September, 2017, the claimant's hours were reduced and ranged to a low of 12 hours in a week.
7. The claimant did not file a claim for partial unemployment benefits due to the reduction of hours.
8. The claimant complained to Supervisor A and Supervisor A told the claimant she would speak with the District Manager.
9. The claimant was offered additional hours when an employee called out but the claimant could not accept the hours because she could not secure child care on such short notice.
10. The week beginning November 19, 2017, the claimant was scheduled to work 13 hours.
11. On November 24, 2017, the claimant told Supervisor A she was quitting due to a reduction of hours.
12. The claimant "could not come to work for 12 hours" and get paid \$100.00 when her bills were much more.
13. The claimant would not have left her employment if she was scheduled for 18 to 20 hours a week.
14. Subsequent to quitting, the claimant sought work at another location where her former supervisor (Supervisor B) worked.
15. The claimant was not subject to any disciplinary action at the time of separation.
16. Work was available for the claimant at the time of separation.

17. The claimant is able, available and actively seeking work.

### 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. Finding of Fact # 6 is unsupported insofar as it states that the claimant's reduction in hours occurred in "August/September". The claimant actually testified that this occurred beginning in July, at the same time that she obtained a new Store Manager. The employer testified that she was not aware whether the claimant's hours changed at all. Likewise, Finding of Fact # 14 is unsupported insofar as it states that this occurred "[s]ubsequent to quitting." The claimant actually testified that she contacted her previous Store Manager about a transfer *prior to* quitting. The employer did not testify about such a conversation. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we believe that the review examiner's findings of fact compel the conclusion that the claimant left her employment with good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

G.L. c. 151A, § 25(e)(1), the section of law regarding voluntarily resignations from employment, 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 . . . .

The explicit language in G.L. c. 151A, § 25(e)(1), places the burden of persuasion on the claimant. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985). Here, the employer reduced the claimant's established schedule of approximately 28 hours per week to an inconsistent schedule of approximately 12 to 13 hours per week<sup>1</sup>. The claimant provided testimony about the effects that this had on her ability to pay her bills and the minimum amount of income she required. However, when a claimant contends that the 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).

The review examiner concluded that, because the employer was still furnishing the claimant some hours each week and she could have filed a claim for partial unemployment benefits, this did not constitute good cause pursuant to G.L. c. 151A, § 25(e)(1). However, it is well-settled that a substantial decline in wages may render a job unsuitable and constitute good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1). Graves v. Dir. of Division of Employment

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<sup>1</sup> The exact reduction is unclear. The claimant testified that she was scheduled to work as few as 8 hours per week. The employer confirmed that, during the claimant's final two weeks of employment, she was only scheduled to work 12 and 13 hours, respectively.

Security, 384 Mass. 766, 768 (1981) (citation omitted). Here, the claimant's hours were reduced somewhere in the range of 54% to 71%. As the claimant was paid on an hourly basis, this represented a proportional reduction in her wages. This reduction was clearly substantial enough to constitute good cause. *See North Shore AIDS v. Rushton*, No. 04-P-503, 2005 WL 3303901 (Mass. App. Ct. Dec. 6, 2005), *summary decision pursuant to rule 1:28* (“[R]elative to the modest \$35,000 salary . . . an indeterminate reduction of 16 percent was a substantial change in the terms and conditions of employment. . . .”)

The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action also 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 this case, the claimant made several such efforts. The claimant testified that she made numerous complaints to her supervisor, that she warned her supervisor several weeks before resigning that she would need to resign if she did not begin receiving more hours, and that she contacted her former supervisor (now working at a different location) about a possible transfer<sup>2</sup>. Note that a claimant must only show reasonable efforts to preserve her employment — not that she had “no choice to do otherwise.” *Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development*, 66 Mass. App. Ct. 759, 766 (2006) (citation omitted).

We, therefore, conclude as a matter of law that the claimant voluntarily left her employment with good cause attributable to the employer, within the meaning of G.L. c. 151A, § 25(e)(1).

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<sup>2</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending November 25, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – October 30, 2018**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
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.

JRK/rh