

Claimant visiting instructor quit because the employer college offered her one course to teach rather than the three she had taught the semester before, with no health insurance benefits. Where the claimant asked for more courses & the employer testified it could not assign her more courses because it had hired a new full-time professor in her department, the claimant established good cause attributable to the employer for quitting, & that further attempts to preserve would be futile.

**Board of Review
19 Staniford St., 4th 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: 0029 5745 72

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 January 17, 2019. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 13, 2019. 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 April 11, 2019. 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 and without making reasonable attempts to preserve her job before quitting, and, thus, was disqualified under G.L. c. 151A, § 25(1)(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 make subsidiary findings from the record. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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's decision to quit because the employer offered her only one course to teach in the upcoming semester, rather than the three she had taught the semester before, did not constitute good cause attributable to the employer for quitting, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant began working from [sic] the employer as a visiting instructor in August 2017.
2. The claimant's supervisor was the employer's associate provost.
3. Instructor's [sic] monetary compensation is determined each semester by the number of courses taught. Instructors teaching at least 2 courses are entitled to partial health care benefits and those teaching at least 3 courses are entitled to full health care benefits.
4. The employer delegates courses based on curricular needs and student enrollment. Visiting instructors are assigned courses on an as needed basis and are not guaranteed a minimum number of courses during any semester.
5. During the Fall 2017 semester, the claimant taught 2 courses, was compensated at a rate of \$15,000 and was enrolled in health care benefits.
6. On October 13, 2017, the claimant was notified she would be teaching 2 courses during the Spring 2018 semester, compensated at a rate of \$15,000 and entitled to benefits.
7. On January 19, 2018, the employer notified the claimant her courses and compensation for the Spring 2018 semester had been increased.
8. During the Spring 2018 semester, the claimant taught 3 courses, was compensated at a rate of \$22,500 and was enrolled in health care benefits.
9. On June 22, 2018, the claimant was notified she would be teaching 1 course during the Fall 2018 semester and not eligible [sic] for benefits. At no time did the claimant decline the offer to teach 1 course during the Fall 2018 semester.
10. In July 2018, the employer hired a new full time professor to teach in [sic] the same subject matter as the claimant.
11. On August 15, 2018 the employer notified the claimant her courses and compensation for the Fall 2018 semester had been increased.
12. During the Fall 2018 semester, the claimant taught 3 courses, was compensated at a rate of \$22,500 per semester plus \$1,000 for advising and was enrolled in health care benefits.

13. On January 11, 2019, the employer notified the claimant via letter she would be teaching 1 course during the Spring 2019 semester, compensated at a rate of \$7,500 and not eligible [sic] for benefits.
14. On or around January 11, 2019, the claimant asked the associate provost to increase her course load. The Associate provost was unable to increase the offered course load. At that time, the employer was unable to provide the additional courses to the claimant due to curricular needs and student enrollment numbers.
15. The employer may have been able to assign additional courses to the claimant prior to the start of the semester as it had done in past semesters.
16. On or around January 17, 2019, the claimant informed the associate provost she would not be accepting the visiting instructor position for the Spring 2019 semester. The claimant indicated she was not accepting the position because the employer was unable to furnish her with additional course [sic].
17. The claimant quit her employment due to the anticipated decrease in compensation and loss of benefits.
18. Work remained available to the claimant had she not resigned.
19. The associate provost informed the associate director the claimant resigned because she wanted more courses and the employer was unable to assign them to her.
20. The claimant filed a claim for unemployment benefits effective February 3, 2019.
21. An appeals hearing was held on April 9, 2019.
22. During the appeal hearing, the associate director testified she was unaware of other duties outside of teaching the claimant could have performed to increase her hours and return to full or part-time benefit status and if the claimant made suggestions to the associate provost as to activities that could increase her hours. The associate director further testified the employer was unable to offer the claimant additional courses because it had hired a new full time professor.

CREDIBILITY ASSESSMENT

In this case, the Review Examine[r] credits the associate director's testimony regarding her recollection of her conversation with [the] associate provost concerning the reason for the claimant's separation, her recollection of when the new full time professor was hired and her testimony about her lack of awareness of alternative duties the claimant could have performed to increase her hours. However, I find the associate director's testimony that the employer was unable to

offer the claimant additional courses because the employer hired a new full time professor not credible. In addition to admitting she had no direct knowledge or involvement in the assignment of courses, the associate director's testimony on this matter is contradicted by credible evidence in the record. The employer hired the new full time professor in July 2018, prior to the Fall 2018 semester. Even with the addition of the new full time professor, in August 2018, the claimant's courses for the Fall 2018 semester were increased. Given the employer was able to offer the claimant additional courses even with the addition of a new full time professor, I concluded the employer was unable to offer additional courses [sic] during the Spring 2019 semester due to curricular needs and student enrollment.

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence.

We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented, except the latter portion where the review examiner found not credible the associate director's testimony that the employer could not offer the claimant additional courses to teach because it had hired a new full-time professor. This conflicts with Finding # 22, where the review examiner found the associate director testified that the employer was unable to offer the claimant additional courses because it had hired a new, full-time professor.

The review examiner's rejection of this testimony is premised on mere speculation as to what might have happened in Spring 2019, based on what had happened in Fall 2018, when the full-time professor was new and the claimant was eventually offered more courses. In contrast, the employer's direct testimony, which is against the employer's interest, showed that there were fewer courses offered to the claimant because of the new, full-time professor in her department. Consequently, we accept the part of Finding # 22 that adopts the employer's direct testimony, and disregard as inconsistent and speculative the portion of the review examiner's credibility assessment that rejects the same testimony.

The review examiner denied benefits after analyzing the claimant's separation under G.L. c. 151A, §§ 25(e) and 25(e)(1). Section 25(e) provides, in pertinent part, as follows:

. . . An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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.

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 G.L. c. 151A, §§ 25(e) and 25(e)(1), it is the claimant's burden to establish that her separation was for urgent, compelling, and necessitous reasons or for good cause attributable to the employer. Based solely on the employer's testimony at the initial hearing, the review examiner concluded that the claimant had not met her burden. We remanded the case for the review examiner to make subsidiary findings based on testimony and evidence already in the record. After remand, we conclude that the claimant has met her burden.

The review examiner found that the claimant began working for the employer as a visiting instructor for the Fall 2017 semester. The employer pays visiting instructors \$7,500.00 for each course they teach per semester; instructors teaching two or more courses in a semester are entitled to health insurance benefits. During the Fall 2017 semester, the claimant taught two courses, she was paid \$15,000.00 for that semester, and she received health insurance benefits.

For the Spring 2018 semester, the employer initially offered the claimant two more courses to teach, for which she would again be compensated \$15,000.00, plus benefits. Subsequently, the employer increased the claimant's courses and compensation for that semester to three courses and \$22,500.00 in compensation, plus benefits.

For the Fall 2018 semester, the employer initially offered the claimant one course to teach, which would not have qualified her for health insurance benefits. Before that semester began, however, the employer offered the claimant additional work; the claimant again taught three classes during the Fall 2018 semester and was paid \$22,500.00, plus benefits.

But in July 2018, the employer hired a new, full-time professor to teach the same subject matter as the claimant. In January, 2019, the employer offered the claimant only one course to teach, to be paid only \$7,500.00 without health insurance benefits. In Finding #22, the review examiner found:

The associate director testified that the employer could not offer the claimant additional courses because it had hired a new full time professor [emphasis added].

The review examiner also found that, after the claimant was only offered one course for the Spring 2019 term in January, 2019, she asked the employer to increase the offered course load. At the time, the employer was unable to add additional courses due to its "curricular needs and student enrollment numbers." Approximately one week later, the claimant quit because the employer could not provide her with additional courses.

A substantial decline in wages may be viewed as good cause for leaving employment. Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981) (claimant not required to return to work when recalled after layoff, where his earnings were substantially reduced). Here, the employer reduced the claimant's course load and compensation from three courses, \$22,500.00 in wages, and health insurance benefits to one course, \$7,500.00 in wages, and no

health insurance coverage. This is one-third of what she had been earning, with an additional loss of health insurance coverage. The employer's undisputed testimony was that it could not offer further courses to the claimant for the upcoming Spring 2019 term, because it had hired a new, full-time professor in the same department. Under these circumstances, we view the claimant's asking the employer for more courses to teach an adequate effort to preserve her employment before quitting. We, therefore, conclude as a matter of law that the claimant quit her job for good cause attributable to the employer, and that she made a reasonable attempt to preserve her employment before quitting.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending January 19, 2019, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 30, 2019



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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

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.

JPC/rh