Although the employer reduced the claimant's weekly schedule from 14 to 10 hours per week, the claimant's job remained suitable for her, as this reduction did not otherwise affect the claimant's life, the remaining aspects of the job remained the same, and the claimant did not show how her commissions may have been affected by the reduction in hours.

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: 0031 3068 34

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 affirm.

The claimant resigned from her position with the employer effective June 16, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 13, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on August 31, 2019.

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 accept the claimant's application for review. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision to deny benefits 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 changed the claimant's schedule from fourteen to ten hours of work per week.

Findings of Fact

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

1. The claimant worked part-time for the employer, a sunglass retailer, from 12/15/17 until 06/12/19.

2. The claimant typically worked Mondays and Fridays from 1 p.m. until 5:30 or 6 p.m. during the winter months and Saturdays and Sundays from 1 p.m. until 7 or 8 p.m. during the summer months.

3. The employer puts out a schedule on a weekly basis. The schedule is posted on a clipboard at the workstation.

4. The claimant had no issues with her work schedule until 06/01/19.

5. On 06/01/19, the claimant noticed she was only scheduled to work from 3 p.m. until 8 p.m. (5 hours) on Saturday 06/08/19 and Sunday 06/09/19.

6. The following weekend (06/15/19, 06/16/19), the schedule was the same.

7. The claimant was not aware what her schedule would be for the weeks following 06/16/19.

8. The claimant saw that a new employee had been scheduled to work an earlier shift (11 a.m.-5 p.m.).

9. The claimant had a good working relationship with her supervisor.

10. On 06/02/19, the claimant spoke with her supervisor and told her that she didn't think it was fair that she wasn't scheduled to work the earlier shift from 11 a.m. until 5 p.m. (6 hours).

11. The claimant's supervisor told her that she would speak with the owner about her concerns.

12. On 06/08/19, the claimant heard nothing back so she wrote a note indicating that her last day would be 06/16/19 and left it at the workstation for her supervisor.

13. On 06/09/19, the claimant worked alongside her supervisor. The supervisor told her that she did not hear back from the owner about her concerns.

14. On 06/11/19, the claimant left a longer letter at the workstation asking her employer to reconsider and offer her the earlier shift which she preferred. She also indicated that her hours had been reduced and her potential commission earnings had been jeopardized. The claimant further wrote that due to her advance age she believed the company forced her to tender her resignation effective 06/16/19.

15. On 06/12/19, at 8:42 a.m., the claimant's supervisor texted the claimant and thanked her for her notice and her service but indicated that the employer decided to relieve her sooner than the 16th and that they took her off the schedule and wished her well.

16. On 06/13/19, the employer wrote to the claimant confirming they received her resignation letter and indicated the claimant had worked 10 hours each week throughout the winter and that the new schedule was still for 10 hours. The employer also indicated that they try to accommodate employees work preferences but that they also consider other factors like sales performance.

17. The claimant's sales performance was not as good as other employees.

18. The claimant may have continued to work for the employer if they explained to her why they changed her schedule but she felt they never gave her that courtesy.

19. The claimant did not call the owner or human resources contact to discuss her concerns.

20. On 06/08/19, the claimant quit her job because the employer scheduled her to work 3–8 p.m. on 06/08 & 06/09 & 06/15 and 06/16/19 and didn't respond to her request to work the earlier shift.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 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. As discussed more fully below, we conclude that the claimant did not establish that she quit her job for good cause attributable to the employer.

In this case, the claimant submitted a written resignation which informed the employer that she was going to resign effective June 16, 2019. Therefore, the review examiner properly analyzed this case under G.L. c. 151A, § 25(e)(1), which 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 . . . .

This statute explicitly places the burden upon the claimant to show that she is eligible to receive unemployment benefits. The review examiner concluded that the claimant had not carried her burden.

The review examiner found that the claimant resigned her position due to the new schedule given to her on or about June 1, 2019. *See* Findings of Fact ## 5, 6, and 20. The findings regarding the reasons for the resignation are supported by the record. The conclusions, however, in Part III of

the review examiner's decision do not specifically address the claimant's main concern raised during the hearing. The reason why the claimant proposed a switch to the 11:00 a.m. to 5:00 p.m. shift, and the major cause of resignation, was that the new schedule represented a reduction in total weekly hours for her. During the spring and summer, the claimant typically worked six to seven hours every Saturday and Sunday, for a total of twelve to fourteen hours per week. *See* Finding of Fact # 2; Exhibit 1, p. 2; and, Exhibit 9. The new schedule, given to her in June of 2019, only had her scheduled for ten hours of work each week, five hours each Sunday and Saturday. The claimant specifically and strenuously argued during the hearing that the problem was not necessarily that her schedule had changed, but that her hours had been reduced. The reduction in hours, in turn, could cause a reduction in her total earnings (whether hourly earnings or commissions). The claimant testified that her hours were reduced from fifteen to ten. However, the substantial and credible evidence in the record is that they were reduced, at most, from fourteen hours to ten hours per week.

The key issue to be addressed is whether the employer's actions in this case made the claimant's job unsuitable for her. The claimant has the burden to show that the employment was not suitable. Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981). The suitability of a job depends on many factors. As provided in G.L. c. 151A, § 25(c), these factors include "whether the employment is detrimental to the health, safety or morals of an employee, is one for which he is reasonably fitted by training and experience . . . is one which is located within reasonable distance of his residence or place of last employment, is [one] which reasonably accommodates the individual's need to address the physical, psychological and legal effects of domestic violence, and is one which does not involve travel expenses substantially greater than that required in his former work."

The Supreme Judicial Court (SJC) has applied these factors in various ways, especially where reduction in work hours and wages are concerned. For example, in Graves, 384 Mass. at 766–767, the claimant was laid off and subsequently recalled to work at a rate of pay that was substantially lower than what he had been paid previously. The SJC held that "[a]n employer cannot defeat the payment of unemployment benefits by offering to reemploy claimants at sharply reduced wages. A substantial decline in wages may render a worker's job unsuitable." Id. at 767–768 and 768 n.3. In another case, the SJC held a job not suitable, where findings showed that "full time workers were offered part time jobs at a reduction of 30% or more in hours and weekly wages, together with increased transportation time." President and Fellows of Harvard College v. Dir. of Division of Unemployment Security, 376 Mass. 551, 554 (1978).[1] In considering the unique factual circumstances presented in each case before it, the SJC has consistently noted that "[s]uitability is not a matter of rigid fixation." Pacific Mills v. Dir. of Division of Employment Security, 322 Mass. 345, 350 (1948); Graves, 384 Mass. at 768; President and Fellows of Harvard College, 376 Mass. at 556.

As far as reductions to wages and hours, per the holding of Graves, any such reduction must be substantial. The Graves court also specifically held that the decline in wages *may* render a job

[1] The Appeals Court has also viewed the reduction of wages as good cause to resign, especially where other aspects of the employment relationship were affected. *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* (upholding decision of agency that reduction in salary, increased contribution toward health insurance, and elimination of dental and disability insurance, all of which amounted to a net loss of almost 16% of total compensation package, rendered job unsuitable).

unsuitable. We interpret this to mean that a reduction in hours does not always, in every case, render a job unsuitable. The number of hours worked each week (and the compensation associated with those hours) is one of the factors to be considered, but it is not the only consideration contemplated by the case law or G.L. c. 151A, § 25(c).

Here, there was no dispute that the claimant was regularly given ten hours of work to do during the winter and autumn months, roughly half the year. During that time, the number of hours was acceptable for her.

The claimant also testified that her commissions could have been jeopardized by the change to her schedule. However, she did not offer any evidence as to what percentage of her earnings was derived from commissions. She also did not work the new schedule for a sufficient amount of time to determine if her commissions would, in fact, be dramatically reduced. Thus, we cannot determine how much of a decrease in earnings she may have experienced as a result of the change in hours.

Finally, no other consideration or evidence provided by the claimant indicates that the job was now unsuitable for her. The claimant testified (several times) that the job location was five minutes from her house. The claimant did not testify that the reduction in hours affected, in any way, her receipt of benefits through the employer, such as health insurance, if, in fact, she received any. The claimant did not testify that the reduction in hours rendered her continued work for the employer impractical due to financial considerations, transportation costs, or other family obligations.

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 supported by substantial and credible evidence and free from error of law, because, although the employer reduced the claimant's weekly schedule of hours, the claimant did not establish that this rendered the claimant's job unsuitable for her, and, thus, she did not prove that she quit her position with good cause attributable to the employer. We do not believe that our analysis and ultimate conclusion in this matter is inconsistent with prior Board decisions regarding the issue of suitability.[2]

[2] *See* Board of Review Decision 0018 8939 61 (February 22, 2017) (claimant eligible for benefits where cut in hours from 20 to 15 per week caused loss of vacation and sick time, health/dental benefits, and life insurance); Board of Review Decision 0013 6512 26 (June 11, 2015) (reduction in hours from 30 to 18–21 per week, in additional to being told that another employee would be performing the claimant's duties gave claimant good cause to resign, rendering her eligible for benefits); Board of Review Decision BR-125080-A (March 1, 2013) (reduction in hours from 40 to 30 per week, in addition to a change in job location rendered job unsuitable and claimant eligible for benefits).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning June 16, 2019, 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 - October 25, 2019

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SF/rh