At her interview, the claimant's future supervisor guaranteed the claimant 40 hours a week, explaining that if hours dropped below 40 in a given week, the employer would send her to another location to complete her hours. After a few months, the claimant's hours dropped to between 30 or 32 hours a week, causing her financial hardship. The employer was unable to make up the difference. Held the claimant had good cause attributable to the employer to resign.

Board of Review
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Issue ID: 0031 3314 98

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award 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 on December 24, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 11, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on October 11, 2019. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment with good cause attributable to the employer and, thus, was not 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 employer's appeal, we remanded the case to the review examiner to obtain additional evidence regarding the agreed-upon terms of the claimant's employment. Both parties attended the remand hearing. Thereafter, the review examiner issued his 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 decision, which concluded that the claimant voluntarily left with good cause attributable to the employer, because the employer substantially reduced the claimant's hours and consequently her earnings, is supported by substantial and credible evidence and is free from error of law.

Consolidated Findings of Fact

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

1. Prior to working for the employer, the claimant was working at a store (the store) on what was considered a part-time basis, 30 to 32 hours per week. The claimant desired 40 hours of work per week.

2. From sometime in June, 2018 until December 24, 2018, the claimant worked as a housekeeping supervisor (at a rate of $14 per hour) for the employer, a hotel.

3. Sometime in early June, 2018, the claimant initially interviewed with the employer's first general manager (the GM) at the employer's corporate office. During the interview, the GM asked the claimant about her work experience. The GM, who had been in the hotel business for approximately 20 years, told the claimant how she had grown within the company and how she wanted to give the claimant an opportunity to grow as well. The claimant asked the GM if the position was full-time, to which the GM responded that it was full-time indeed. The claimant, who believed that full-time is 40 hours per week, did not ask any additional questions regarding the number of hours. The GM, other than stating the position was of a full-time nature, did not offer the claimant any additional information regarding how many hours she would be working per week. The GM also told the claimant that if the hotel's hours dropped, she would be sent to other sister hotels in order to complete her hours. The GM and the claimant did not discuss the position's fringe benefits.

4. The GM, who was impressed with the claimant, offered her the position right there on the spot.

5. The GM never told the claimant that the employer considered 30 hours or more per week as full-time.

6. Around the time the claimant was interviewed, the GM interviewed many other prospective employees.

7. Immediately after interviewing with the GM, the claimant interviewed with the employer's housekeeping manager (the HM). During the interview with the HM, the claimant told her that she had been working at the store between 30 and 32 hours per week and that she would not accept a position unless she was guaranteed 40 hours per week. The HM told the claimant that the position was 40 hours per week and that if the hotel's hours dropped, she would be sent to another hotel in order to complete her hours. The HM also told the claimant she would have Fridays and Saturdays off but work on Sundays and Mondays as the managers had those days off from work.

8. At no time during the interview did the HM tell the claimant that the employer considered 30 hours or more per week as full-time.

9. After interviewing with the GM and the HM, the claimant accepted the position.

10. Had the claimant been told that the employer considered 30 or more hours per week full-time, or that she was not guaranteed 40 hours per week, she would not have accepted the position.

11. The employer maintained an employment classifications policy contained within its employee handbook (the handbook). The policy read, in relevant part, "A regular full-time associate is an associated who has completed his or her introductory period and is regularly scheduled to work an average of 30 or more hours per week. Unless stated otherwise, all the benefits provided to associates are for regular full-time associates only. This includes PTO, personal days or sick leave whichever may be applicable, holiday pay, health insurance, and other benefits coverage."

12. During the claimant's orientation, the claimant was provided with lots of documents, including a copy of the employer's handbook.

13. The claimant signed an acknowledgment stating that she had received a copy of the handbook.

14. The claimant did not read the employment classifications policy from the handbook because she trusted the HM's statement that she would be scheduled for 40 hours per week.

15. As she had not read the employment classifications policy and remained unaware of it, the claimant did not ask any questions about it to anyone at the employer's workplace.

16. Once she started working, the claimant reported directly to the HM.

17. For the first few months of her employment, the claimant worked on 5 days and at least 40 hours every week, and on many occasions worked closer to 50 hours.

18. Around early October, 2018, as a result of a business slowdown, the claimant's hours were reduced from 40 or more hours per week to between 30 and 32 hours per week.

19. Sometime in October, 2018, the claimant complained to the HM, asked why her hours were being reduced, and was told that it was due to a business slowdown. The HM then told the claimant that the employer considered 30 or more hours full-time, this being the first time the claimant had heard this.

20. Sometime in October, 2018, after the claimant complained about her hours being reduced, she was offered front desk training and additional work in the kitchen. The claimant accepted the front desk training but received only 1 day of training. The claimant did not accept the kitchen work because the schedule required her to work until midnight and she had no childcare available for her minor children.

21. In order to increase her hours, the employer sent the claimant to work 1 day at a hotel in [Town A], NH and another day at a hotel in [Town B], MA. The claimant was offered no additional shifts at other hotels.

22. As the claimant continued working in her position, her weekly hours remained at between 30 to 32 hours per week.

23. As a result of her reduction in hours, resulting in her earnings being decreased by approximately 25%, the claimant experienced financial hardship.

24. On or around late November or early December, 2018, the claimant again spoke with the HM regarding the reduction in hours. The manager told the claimant that there was nothing she could do and that she was unaware how long the reduction of hours would remain in effect.

25. The claimant, having her work hours reduced from 40 hours per week to 30 to 32 hours per week, without being told how long this reduction would be in effect, and causing her to experience financial hardship as a result, felt she had no choice but to quit her employment.

26. On December 13, 2018, the claimant provided the HM with a letter informing her that she would be resigning from her position effective December 28, 2018.

27. The claimant verbally told the HM that she was quitting her employment as a result of the reduction in hours.

28. At the time she submitted her notice of resignation, the claimant had not been offered subsequent employment.

29. On December 22, 2018, the claimant accepted a full-time, permanent position with a day-care center to begin on January 3, 2019.

30. The claimant continued working for the employer until December 24, 2018, at which time she was told not to come in for any future shifts.

31. On June 17, 2019, the claimant filed a claim for unemployment benefits with an effective date of June 16, 2019.

Credibility Assessment:

During the second remand hearing, the GM testified that she was "100% certain" that she told the claimant, during her initial interview, that the employer considered 30 hours or more as full-time. The GM also initially contended that this interview took place at a job fair. After the claimant directly refuted the GM's contentions, the GM admitted that it was possible she did not talk about hours with the claimant (as she had been interviewing lots of applicants around that time) and that the interview did not take place at a job fair. Based on her contradiction and the claimant's clear, consistent, and specific testimony, it is concluded that the claimant's testimony is credible, and that the GM did not discuss anything about what the employer considered full-time hours with the claimant during the interview. During the first remand hearing, the HM contended that the claimant at no point complained about her reduction in hours and that she specifically informed the claimant, during the initial interview, that the employer considered 30 hours or more full-time. The HM, however, admitted that the claimant was offered front desk training and testified that she believed the claimant had been sent to other hotels in order to increase her hours. Where it is likely that the claimant would be offered additional hours in other hotels (which the claimant testified was told to her by the HM, during the initial interview, as a way to reach 40 hours of work in the event the hotel's hours dropped) and front desk training as a result of a reduction in hours complaint, it is concluded that the HM's testimony that the claimant never complained about her reduction in hours is not credible. Furthermore, where the claimant provided detailed, specific, and consistent testimony throughout all hearings of all relevant events and conversations, and also where the HM did not appear at the second remand hearing to provide additional rebuttal testimony following the claimant's testimony from the first remand hearing, it is concluded that: the claimant's testimony is more credible; the HM, at no point until October 2018, informed the claimant that the employer considered 30 hours or more as full-time work; the claimant told the HM that she would only accept a 40 hour per week position (based on her prior experience at the store only providing her 30 to 32 hours per week when she desired more); and the claimant was told by the HM that the employer was unaware how long the reduction in hours would remain in effect.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 original 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. As discussed more fully below, we agree with the review examiner that the claimant has carried her burden to show that she is eligible to receive unemployment benefits.

When a claimant voluntarily leaves her employment, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), which provides, in relevant 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 review examiner found the claimant resigned her employment because she experienced financial hardship as a result of the employer's reduction in her hours. *See* Consolidated Findings of Fact ## 23, 26 and 27. Therefore, the issue in this case is whether the reduction in hours rendered the job unsuitable such that she had good cause to resign.

Consistent with the statutory language of G.L. c. 151A, § 25(e)(1), the claimant bears the burden to show that the employment in question was not suitable. Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981). Here, the claimant argues that a 25% reduction in hours constituted a substantial reduction in hours that caused the claimant financial hardship, rendering the job unsuitable. Consolidated Finding of Fact # 23. In Graves, the Supreme Judicial Court (SJC) concluded that "[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 that a job was unsuitable where "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). The Appeals Court has also opined that a reduction of wages may constitute 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). We interpret these decisions to mean that a substantial reduction in wages or hours is one of several factors relevant to determining the suitability of a job. *See, e.g.,* Board of Review Decision 0031 3068 34 (Oct. 25, 2019). As discuss below, we agree that the substantial reduction of hours experienced by the claimant in conjunction with other factors, is sufficient to establish that the claimant voluntarily left with good cause attributable to the employer.

The findings and record before us indicate that the employer reduced the claimant's hours by approximately 25 percent, which resulted in the same proportionate reduction in her earnings. In substantially reducing the claimant's hours, the employer also failed to fulfill its promise that it would provide the claimant with at least 40 hours of work a week. *See* Consolidated Findings of Fact ## 7, 8, and 10. When the claimant informed her future supervisor at her interview that she would not take the job unless guaranteed 40 hours a week, her supervisor assured her that she would be provided those hours. Consolidated Findings of Fact # 7. The claimant accepted the job based on these representations from her supervisor. *See* Consolidated Findings of Fact ## 10 and 14. It was therefore reasonable for the claimant to conclude that the employer was failing to fulfill its promise when it reduced her hours.

The Board has previously found that a claimant may establish good cause attributable to an employer where the employer fails to fulfill a promise relating to material terms of employment. *See* Board of Review Decision 0015 9623 79 (February 11, 2016) (the claimant had good cause attributable to the employer where the employer reneged on its promise to switch the claimant from an overnight shift to a day shift); *see also* Board of Review Decision 0010 9404 96 (April 14, 2014) (the claimant had good cause attributable to the employer, because the employer failed to give the claimant a promised raise).[1] As the employer here agreed to specific terms of employment based on the claimant's expressed needs, we give significance to the claimant's reliance on this promise as another factor relevant to whether she established good cause attributable to the employer under G.L. c. 151A, § 25(e)(1). We believe that the employer's failure to provide those 40 hours of work per week, as promised, constituted good cause attributable to the employer.

In order to be entitled to benefits, a claimant must also show reasonable efforts to preserve her employment, or that she reasonably believed further efforts would be futile. *See* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). When the claimant complained about the reduction of hours, the employer offered her additional work at the front desk or in the kitchen. Consolidated Finding of Fact # 20. She was unable to take shifts in the kitchen due to childcare obligations and only received one day of training for front desk work. Id. The employer similarly offered her a day of work at a property in [Town B], MA, and a day of work at a property in [Town A], NH. Consolidated Finding of Fact # 21. Despite this, the claimant's hours remained between 30 and 32 hours a week. Consolidated Finding of Fact # 22. After complaining to her supervisor again, and being told there was nothing the employer could do about the reduction in hours, the review examiner found that the claimant felt she had no choice but to resign. Consolidated Findings of Fact ## 24 and 25. Under these circumstances, we agree that the claimant took reasonable steps to preserve her employment and, when those were unsuccessful, reasonably believed that further efforts to obtain additional hours would have been futile.

We, therefore, conclude as a matter of law that the review examiner's decision to award benefits is supported by substantial and credible evidence and free from error of law, because the claimant carried her burden to show that she resigned her position with good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1), because the employer substantially reduced her hours, and reneged on its promise to provide her with full-time work..

[1] Board of Review Decisions 0015 9623 79 and 0010 9404 96 are unpublished decisions, available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week of June 16, 2019 and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 11, 2020

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.

LSW/rh