

A claimant, who gave notice that he was going to quit his job to focus on his schooling, is ineligible for benefits as of the date he said he was going to concentrate on his schooling. However, because the employer substantially cut the claimant's hours during his notice period, this created good cause for the claimant to quit prior to when he was initially going to separate. The claimant is eligible for benefits under G.L. c. 151A, § 25(e)(1) during his notice period.

**Board of Review
19 Staniford St.
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: 0032 6800 99

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 we affirm in part and reverse in part.

The claimant separated from his position with the employer on November 8, 2019. He filed a claim for unemployment benefits with the DUA, effective November 10, 2019, which was denied in a determination issued on January 9, 2020. 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 February 1, 2020.

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 accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence as to whether the claimant quit his employment due to a reduction in hours initiated by the employer. Only the claimant attended the 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 decision to deny benefits pursuant to G.L. c. 151A, § 25(e)(1), effective the week beginning November 3, 2019, is supported by substantial and credible evidence and is free from error of law, where the claimant informed the employer that he was going to quit his job at a later date to focus on his schooling, the employer subsequently cut the claimant's hours, and the claimant then quit his job due to the reduction in his hours.

Findings of Fact

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

1. In December 2018, the claimant began attending the National Aviation Academy (the School) to obtain a certification as an aviation mechanic.
2. The claimant worked for the employer, a restaurant, from an unknown date in June, 2019, until November 8, 2019.
3. The claimant worked a varied full-time schedule, 40 hours a week.
4. The employer posted the claimant's schedule on Sunday for the following week. The claimant received his schedule electronically or in person.
5. The claimant worked full time while attending school full time.
6. The claimant earned \$13.50 per hour.
7. During the claimant's employment, the claimant lived in [Town A], Massachusetts.
8. The claimant worked at the employer's location in [Town B], Massachusetts.
9. The claimant's commute from [Town A], Massachusetts to [Town B], Massachusetts was approximately 20 minutes.
10. During the claimant's employment, he did not have a driver's license. He received rides to work from a friend. When the friend could not bring the claimant to work, he received a ride from a ridesharing company, which cost the claimant \$20 a trip.
11. The School covered the cost of the claimant's transportation to and from school.
12. In October 2019, the claimant told the employer's team leader he was going to quit his employment in November 2019 because he was required to complete practice hours and take exams in December 2019.
13. In early October, 2019, after the claimant told the team leader that he was intended [sic] to quit work, the claimant was not on the schedule to work. The claimant spoke with his manager about not being on the schedule and his manager told him he thought he was quitting at that time. The claimant told him he was not quitting at that time. The manager told the claimant to keep an eye on the schedule to make sure he was not removed from the schedule again.
14. In early October 2019, the claimant's schedule was reduced from 40 hours a week to approximately 20 to 24 hours a week.

15. On an unknown date in October 2019, after the claimant's schedule was reduced, he spoke to the manager and asked for more hours. The manager gave the claimant an additional five hours for the week.
16. The following week after the employer reduced the claimant's schedule, he was scheduled for 26 hours. The claimant was late to work one day because he attended school before work and was working on a project. The claimant worked 23 hours the week he was late to work.
17. On an unknown date in October 2019, the claimant asked the manager for additional hours. The manager told the claimant his schedule was reduced because business was slow.
18. While relying on his friend and ridesharing during October 2019, the claimant could not afford transportation to work when his hours were reduced by the employer.
19. On November 8, 2019, the claimant called the employer and spoke with the manager. During the phone call, he told the manager he quit effective immediately to focus on completing school.
20. On November 8, 2019, claimant quit his employment to focus on completing school because he could not afford transportation to work when his schedule was reduced from full time to part time.

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 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. As discussed more fully below, we conclude that the claimant is subject to disqualification pursuant to G.L. c. 151A, § 25(e)(1). However, we disagree that the claimant is disqualified beginning November 3, 2019.

During the proceedings before the review examiner, the claimant testified that he quit his position on or about November 8, 2019. Consolidated Findings of Fact ## 19 and 20. His separation on November 8, 2019, occurred after the claimant had already told the employer that he was going to quit his job in November to focus on his schoolwork in December of 2019. Consolidated Finding of Fact # 12. Thus, there is no dispute that the claimant resigned his employment. Because the claimant resigned, G.L. c. 151A, § 25(e)(1), applies to the claimant's separation. That section of law 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 this section of law, the claimant has the burden to show that he is eligible to receive unemployment benefits. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

The review examiner's consolidated findings of fact show that, regardless of any reduction in hours which took place in October and early November of 2019, the claimant was planning to quit his job to focus on his schooling. No specific dates are provided in Consolidated Finding of Fact # 12. Indeed, during the initial hearing in this matter, the claimant testified that he did not give a specific date to the employer when he indicated that he was going to resign in the future. The claimant was going to resign his job specifically to focus on school. Such a reason does not amount to good cause attributable to the employer. The claimant's decision to focus on school was a personal choice, unrelated to any actions taken by the employer. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980) (focus is on employer's conduct in cases arising under good cause attributable to the employer standard). In short, quitting to focus on school is a disqualifying separation under G.L. c. 151A, § 25(e)(1).

Although the claimant then quit, effective November 8, 2019, he had initially given notice that he was going to quit, for disqualifying reasons, effective in November. Applying the statute liberally, as we must under G.L. c. 151A, § 74, we conclude that the disqualification period should begin December 1, 2019. The claimant told the employer that he was quitting to focus on school in December. Thus, it is clear that he would no longer have been working for the employer as of December 1, 2019.

The question then remains as to whether the claimant is eligible for benefits for the period from the weeks of November 10, 2019, through November 30, 2019. In other words, we must consider whether the claimant had good cause to cut short his notice period and quit as of November 8, 2019.¹ We think that the claimant did have good cause for quitting as of November 8, 2019, given that his hours of work were substantially cut by the employer after he gave his notice.

The review examiner found that the claimant was hired to work forty hours per week. Consolidated Finding of Fact # 3. After the claimant gave his notice, he was mistakenly taken off the schedule for a week. Consolidated Finding of Fact # 13. In other weeks in October of 2019, the claimant's schedule was reduced from forty hours of work each week to between twenty and twenty-six hours of work. Consolidated Findings of Fact ## 14, 16–17. This substantial reduction in his hours of work resulted in significantly decreased income, and the claimant found it difficult to afford getting to work. Consolidated Findings of Fact ## 10 and 18. Thus, the reduction in his hours created a situation in which the job with the employer was no longer suitable for the claimant, and he had good cause attributable to the employer for resigning on November 8, 2019. *See Graves*

¹ The case is analogous to one in which a claimant gives notice that he will quit his job (for disqualifying reasons, under G.L. c. 151A, § 25(e)(1)), and the employer discharges the claimant during the notice period. If the discharge is non-disqualifying, the claimant would be eligible for benefits during the notice period but disqualified as of the date he gave for his final day of work.

v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981) (citation omitted) (substantial decline in wages may render job unsuitable).²

We, therefore, conclude as a matter of law that pursuant to G.L. c. 151A, § 25(e)(1), the review examiner's decision to deny benefits, beginning November 3, 2019, is not supported by substantial and credible evidence and free from error of law, because the claimant had good cause attributable to the employer for resigning as of November 8, 2019. However, because he had already given notice that he was going to separate from his job for disqualifying reasons, the claimant is subject to disqualification under G.L. c. 151A, § 25(e)(1), beginning December 1, 2019.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week beginning December 1, 2019, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.



BOSTON, MASSACHUSETTS

Stawicki, Esq.

DATE OF DECISION - May 18, 2020

Charlene A.

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
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until June 1, 2020³. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day following the thirtieth day.

To locate the nearest Massachusetts District Court, see:

www.mass.gov/courts/court-info/courthouses

² We note that the claimant did try to preserve his job by speaking with his manager and asking for more hours. The manager told him that business was slow. See Consolidated Findings of Fact ## 15 and 17.

³ See Supreme Judicial Court's Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-27-20.

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