Claimant did not show that his job became unsuitable when the employer relocated. An increase to a one-hour commute is not uncommon or unreasonable in the metropolitan area where the claimant resides. The fact that it also interfered with getting to and from a part-time job does not constitute good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0032 8808 99

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 reverse.

The claimant resigned from his position with the employer on November 15, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 17, 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 February 5, 2020. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer, and, thus, he 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 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant had good cause attributable to the employer to resign when the employer moved the location of its office, 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 as a Operations Analyst for the employer, an engineering company, from 6/9/14 until he separated from the employer on 11/15/19.

2. The claimant was hired to work fulltime, earning an annual salary of $72,000 plus bonuses.

3. The claimant left work when the business relocated from Town A], MA to [Town B], MA. The claimant had no other reason for leaving work and would have remained working had the company not changed his terms of employment.

4. The claimant was notified in June of 2019 that the employer was relocating their headquarters to [Town B], MA. Employees were told they could relocate with the company or they could leave. The claimant had until August of 2019 to let the employer know if he planned to continue working.

5. The claimant was living in [Town C], MA at the time. The claimant's commute was 5 miles from his residence to the [Town A], MA location. It took the claimant approximately 10 to 15 minutes to get to work.

6. After the move, the claimant's commute would have been 26.4 miles and 1 hour each way. The claimant worked a part time job as a Tax Preparer in [Town D], MA from February to April each year. The relocation to [Town B], MA would have taken longer to commute and would interfered with him getting to and from his part time job.

7. The claimant felt he had not choice and decided to leave. The claimant gave notice and worked out his notice period until 11/15/19.

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 ultimate 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the claimant voluntarily left his employment, his eligibility for benefits is properly analyzed 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 . . . .

The express language in this statutory provision assigns the burden of proof to the claimant. In this case, we do not believe the claimant has met his burden.

The review examiner decided that because the employer moved the claimant's place of employment, the claimant had good cause attributable to the employer to resign. The question before us is whether the claimant has shown that this new location made the work unsuitable. "Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of 'good cause.' *See* Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 n. 3 (1981)." Baker v. Dir. of Division of Unemployment Assistance, No. 12-P-1141, 2013 WL 3329009 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*.

Finding of Fact # 5 provides that, from his home to the employer's original location, the claimant commuted only 10–15 minutes to work. The new location would have increased his commute to one hour each way and interfered with him getting to and from a part-time job. Finding of Fact # 6. While this longer commute was, undoubtedly, less convenient, we reject the notion that a one-hour commute in this day and age in the Greater [City A] area is uncommon or unreasonable. Moreover, nothing in the evidence suggests that the commute would have been detrimental to the claimant's health or safety, or that was unaffordable. *See* Pacific Mills v. Dir. of Division of Employment Security, 322 Mass. 345, 349–350 (1948) (in determining the suitability of a job, many factors are to be considered, including whether the employment was detrimental to the health and safety of the employee).

We next consider the greater difficulty in getting to his part-time job. Even if the relocation rendered the claimant *unable* to work the part-time job, we are unaware of any legal authority that views preserving part-time employment as a compelling reason to leave full-time work. In fact, the Legislature places a priority on full-time employment. It expects that unemployed workers will only be eligible for benefits if they are unable to obtain full-time work. *See* G.L. c. 151A, §§ 1(r) and 29. Here, the claimant had full-time work but prioritized his part-time employment. It may have been a good personal choice, but it does not rise to good cause attributable to the employer to resign. *See* Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980) (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).

We, therefore, conclude as a matter of law that the claimant voluntarily left his employment without demonstrating that he did so for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning November 10, 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 Paul T. Fitzgerald, Esq.
DATE OF DECISION - March 27, 2020 Chairman

Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. declines to sign the majority opinion.

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 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.

AB/rh