

The claimant had good cause attributable to the employer to quit after his employer informed him that he could only continue his employment if he accepted a 16.67% reduction in pay or a change to a per diem schedule. Both options would result in a substantial reduction to his compensation. The claimant is eligible under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0037 1191 32

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 his position with the employer on April 5, 2020. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on April 20, 2020. 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 22, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without either good cause attributable to the employer or urgent, compelling, and necessitous reasons 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant 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 reduction to the claimant's compensation did not constitute good cause for leaving his employment, 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 full-time Licensed Practical Nurse (LPN) Field Supervisor for the employer, a home health care provider, between 12/03/2018 and 04/03/2020, when he separated.

2. The claimant's direct supervisor was the Director.
3. The claimant's job required him to oversee the nurse aides in the field and to provide services to the patients that required an LPN.
4. The claimant's job duties primarily consisted of traveling to patient homes throughout the day to oversee and assist the nurse aides. The claimant reported to the employer's office each morning and at the end of each day.
5. The claimant had a weekly work schedule of forty (40) hours per week. The claimant's pay rate was \$30.00 per hour. The claimant was paid for forty (40) hours each week, even if he worked less than forty (40) hours each week.
6. In March 2020, the Commonwealth of Massachusetts adjusted nursing regulations to enable nurses to practice and conduct visits with patients virtually during the Covid-19 pandemic.
7. The employer determined that their staff would not visit patient homes to protect against Covid-19.
8. On 04/03/2020, the employer informed the claimant that he would no longer be traveling to patient homes and that patient visits would be conducted from the employer's office through virtual means.
9. Conducting job duties virtually from the office and eliminating the travel to patient homes reduced the number of hours available to the claimant.
10. The claimant was presented with two (2) employment options: 1) to keep his pay rate of \$30.00 per hour and to work on a per diem basis, being paid for the hours he was in the office working with patients virtually; or 2) remain a full-time employee, earning forty (40) hours of pay per week at a reduced pay rate of \$25.00 per hour.
11. On 04/05/2020, the claimant emailed the Director and resigned from his position. The claimant informed the Director that he did not want to work primarily in the office and declined the new terms of his employment.
12. The claimant did not request a leave of absence.
13. A leave of absence would have been available to the claimant if requested.

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 original 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 reject the review examiner's legal conclusion that the changes to the terms of the claimant's employment did not give the claimant good cause to leave his employment.

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

It is well-settled law that a substantial decline in an employee's wages may render a job unsuitable and constitute good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1). Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981) (citation omitted). Here, the review examiner found that due to a lack of work caused by the COVID-19 public health emergency, the employer was forced to change the terms of the claimant's employment on April 3, 2020. Specifically, the claimant could no longer visit clients in their homes and would, instead, conduct his client visits virtually from the employer's office. In order to continue his employment, the claimant was required to accept either a 16.67% reduction in pay from \$30.00 per hour to \$25.00 per hour while continuing to work full-time or a change to *per diem* status at his same pay rate. The review examiner found that the claimant chose to resign instead of accepting the changes to his duties and pay rate.

While we do not believe that requiring the claimant to perform his client visits virtually instead of in person constitutes a detrimental change to the terms of the claimant's employment, the findings establish that the change to the claimant's wages was detrimental to the claimant's livelihood. In our view, either a reduction of 16.67 percent in the claimant's hourly rate or a change to *per diem* status without a guarantee of hours would result in a substantial reduction to his compensation. *See Graves*, 384 Mass. at 768. Additionally, there is no indication in the record that these changes to the terms of the claimant's employment would be temporary. Thus, the claimant had good cause attributable to the employer to leave his employment.

Furthermore, the employer's testimony establishes that the claimant took reasonable steps to preserve his employment on April 3, 2020, when he unsuccessfully tried to negotiate a higher hourly rate than the employer's final offer of \$25.00 per hour.¹ *See Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93–94 (1984) (an employee who voluntarily leaves employment due to an employer's action has the burden to show that he made a reasonable attempt to correct the situation or that such attempt would have been futile).

¹ This portion of the employer's testimony, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. included in the findings of fact. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

We, therefore, conclude as a matter of law that the claimant is entitled to benefits under G.L. c. 151A, § 25(e)(1), because he voluntarily resigned from his employment with good cause attributable to the employer.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning April 5, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 30, 2021



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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.

SVL/rh