

**Held the claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because she resigned without showing that planned changes to her job rendered it unsuitable. While the claimant was given additional duties, she had the requisite license and experience to perform these duties. At the time she quit, she also did not know whether her schedule or pay would change.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> 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: 0046 4912 41**

### 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 separated from her position with the employer on May 20, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 30, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on October 16, 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, 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 information about the circumstances surrounding the claimant's separation. Both parties 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, which concluded that the claimant had good cause for resigning her employment because the employer unilaterally changed her position, hours, and schedule, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant worked for the employer, a high-end beauty salon, for the past ten years.

2. Since 2015, she has worked as a full-time receptionist/Spa Coordinator earning a weekly salary of \$650.00.
3. While she worked as a receptionist, the claimant sometimes colored her friend's and coworker's hair.
4. There were often three receptionists working at the front desk at a time.
5. The Owner considered the claimant an extremely hard working and good employee.
6. They were very close personally as well and the Owner felt like he helped the claimant tremendously while she learned English and learned the beauty trade during the decade they worked together.
7. For instance, the claimant was trusted with security codes.
8. Another example of their closeness was when the Owner visited the claimant while she worked at her other job as a waitress at a diner on her days she had off from the salon.
9. The diner closed in 2019 and the claimant asked to pick up more hours with the employer afterwards.
10. The claimant worked the following schedule for the employer: Sun/Mon-Off; Tuesday 8:45 a.m.–7:45 p.m.; Wednesday 8:45–4 p.m.; Thursday 9–7:30 p.m.; Friday 9 a.m.–3:30 p.m., and Saturday 7:30–4 p.m.
11. The claimant holds a cosmetologist license which allows her to perform hair, nail care, and skin care.
12. To make the small salon run smoothly, staff often performed multiple duties such as assisting with answering phones, greeting customers, running errands, and assisting stylists.
13. On 03/14/20, the employer's salon closed due to the COVID-19 pandemic.
14. The following week, the claimant made sales calls to customers on behalf of the employer.
15. The claimant found out that afterwards the Owner then gave those duties to the new General Manager's daughter. The claimant was also close friends with the new General Manager. She was becoming the General Manager when the salon reopened.
16. After that week, the Owner told the claimant to file for unemployment benefits.

17. On 04/29/20, the employer texted the claimant: "Plan to start working full-time! Don't let unemployment know yet. We will pay you the first couple of weeks ourselves! Then after that you will inform unemployment your [sic] going back to work! And the company will pay you. Please don't share this information."
18. As of 05/02/20, the claimant began working in the salon while it was closed to the public. The claimant cleaned and prepared the salon for reopening. She also answered phones and mixed hair color for the stylists.
19. On 05/02/20, the claimant and the new General Manager went to the bank to get petty cash to pay contractors that had performed work at the salon. The claimant cashed the check and gave the cash to the General Manager to pay the contractors.
20. The claimant worked each day from 05/02/20 through 05/19/20, while the salon was closed to the public.
21. The Owner paid the claimant \$250 cash and a check for \$143.19 for services performed while the salon was closed.
22. On 05/19/20, the Owner met with the claimant to discuss the reopening. The Owner told the claimant that she would now be working upstairs in a color room and would have to answer phones, book appointments, and speak with customers while she mixed color for 5-6 stylists and cleaned and sanitized the salon.
23. The claimant felt she was not qualified to mix the hair color because she was not up to date with the current colors, techniques, and cuts because she had been working predominantly as a receptionist for the previous five years and knew the employer's customers were high end and would have high expectations for their hair care experience. She was afraid of making a mistake while mixing the color.
24. The claimant also felt overwhelmed because she knew she would not be able to concentrate on mixing the hair color while she performed all the other duties expected of her.
25. During their meeting, the Owner did not confirm how many hours she would be working each week. When the claimant told the Owner that she needed to know how much she would be paid and what hours she would be working, he told her that it was his business and that she should be thankful she had a job. He further stated that he would update her as time goes by because he had a lot of employees to accommodate.
26. The Owner did not intend to change the claimant's schedule or salary because he had received a PPP loan.

27. The new General Manager did not attend the meeting.
28. Based upon what she observed around the salon, the claimant believed the new General Manager's daughter would be working as one of the receptionists at the front desk.
29. The claimant felt the Owner was disrespectful and demeaning during their meeting. She was upset because she would be working upstairs in the color room and not downstairs in the reception area and that the General Manager's daughter would be there in her place.
30. That night, the claimant called her friend, the General Manager. They spoke for an hour while the claimant vented about the meeting she had with the Owner.
31. The claimant told the General Manager that she has been working hard for the Owner for ten years and that she did not like the way she was being treated. She said she was not returning to work because of what the Owner told her that day about her position changing.
32. During their conversation, the claimant also told the General Manager that she was making more money on unemployment.
33. On 05/20/20, the claimant did not work.
34. The claimant did not advise the Owner that she quit her job.
35. On 05/20/20, the Owner texted the claimant and asked her where she was.
36. The claimant did not respond to the Owner's text because she was hurt by how she was treated in the 05/19/20 meeting.
37. On 05/20/20, the daughter of the General Manager, was offered the claimant's position and signed a document indicating she would now be working as a Nail Technician/Spa Coordinator.
38. The salon was scheduled to reopen on 05/26/20.
39. The claimant quit her job because she was hurt by the way the Owner spoke to her on 05/19/20 and because she did not want to work upstairs in the color room and mix hair color while juggling her other duties. She was also hurt because she believed the General Manager's daughter would be working at her old desk, and because she did not have confirmation that she would be working the same schedule and receive the same pay after the salon reopened.
40. The claimant has not performed work for any other employer since she filed her claim for benefits until after she stopped certifying for weekly benefits.

### Credibility Assessment:

The claimant's testimony is considered credible. She provided logical explanations supporting her reasons for resigning. Her testimony that she spoke with the General Manager for an hour on 05/19/20 is supported by the phone records in the exhibits. Her testimony that she believed the General Manager's daughter would be working at the front desk, where she used to work was supported by the signed job description form dated 05/20/20, which was only the day after the claimant's meeting with the Owner and the first day she did not show up for work. The Owner confirmed that the claimant was an extremely hard working person and therefore it is not logical that such a hardworking individual who often worked two jobs, seven days a week, would choose to quit a job and burn bridges she had for a decade simply to collect a temporary weekly unemployment bonus. Rather, the testimony supports the fact that she quit because she was overwhelmed with having to work upstairs in the color room and prepare hair color for 5-6 stylists after having not consistently colored hair for many years while performing her other work duties and hurt because the General Manager's daughter was working at her old desk and by the why [sic] the Owner spoke with her during their meeting. That is supported by the fact that even though they were close friends and had worked together for a long time, she did not call or text him to notify him that she was not coming back to work.

It is unreasonable to believe that on 05/19/20, the Owner told the claimant that she would continue to be paid her same salary, work the same hours, and continue performing the same work duties as she had in the past. There would have been no need for a meeting if there were no changes being made. And the claimant, who has been established as a hard-working employee and close friend, would then not have quit the following day without reason to do so, especially since she had continued to work for the employer while they were closed during the COVID-19 pandemic. It is more reasonable the Owner of the salon was stressed due to the effect the COVID-19 pandemic was having on his business and may have said things and in a different tone than he normally communicated with the claimant. Therefore, the claimant's testimony as to what occurred during the 05/19/20 meeting is found more credible than that of the Owner's.

The General Manager's testimony was not credible. During the first hearing, she testified that her daughter started working as a receptionist on 07/15/20. This testimony is false as the documentation showed her daughter began working as the Spa Coordinator on 05/20/20. Additionally, the General Manager withheld other critical information from the Owner, as she never told him about the 05/02/20 check that she believed the claimant stole. Therefore, it is not a stretch to believe she did not tell him that the claimant advised her that she quit during their 05/19/20 conversation. And the fact that her daughter was moved into the claimant's position immediately does not support her testimony that the claimant never told her that she was quitting or why she was quitting.

## 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, based upon the record after remand, we reject the review examiner's legal conclusion that the claimant resigned her employment for good cause attributable to the employer, as discussed more fully below.

As the claimant resigned from employment, her separation is properly analyzed under G.L. c. 151A, § 25(e), 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 terms of this provision assign to the claimant the burden to prove that she had good cause attributable to the employer to resign.

When a claimant contends that his or her 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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

The review examiner's consolidated findings include a detailed credibility assessment in which she deemed the claimant to be the more credible party. Such assessments are within the scope of the fact finder's role and unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). We see no reason to disturb the review examiner's credibility assessment. On the basis of her credibility assessment, the review examiner rendered consolidated findings as to the reasons why the claimant quit her position. We next consider whether based on these findings, the claimant has sustained her burden of establishing she quit for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)

The review examiner found that, on May 19, 2020, the employer informed the claimant that she would be working in a different room in the employer's facility and would be assisting with additional cosmetology services such as mixing color for other stylists when they reopened the following week. Consolidated Finding # 22. However, there is no indication that such changes rendered the claimant's position unsuitable. The review examiner found that the claimant had the requisite license and experience to perform such cosmetology services, and she was already mixing colors for clients during the weeks leading up to the employer's re-opening. Consolidated Findings ## 11 and 18. While the claimant may have had concerns about the volume of work and her ability to meet the demands of her new position, her concerns were merely speculative as she resigned

before any changes were put into effect. *See* Consolidated Findings ## 24, 31, and 39. Therefore, the claimant did not provide sufficient evidence to show that her duties had changed so substantially as to render her job unsuitable.

The review examiner also found that the claimant expressed concerns about changes to her salary and schedule. Consolidated Finding # 39. A substantial decrease in hours or pay may render a job unsuitable and constitute good cause attributable to the employer for resigning under G.L. c. 151A, § 25(e)(1). Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981) (citation omitted). However, the record indicates that, at the time she quit, neither party knew whether the claimant's hours or salary were going to change when the employer re-opened its salon. *See* Consolidated Finding # 25. Therefore, the claimant did not show that a substantial change to her hours or salary rendered her job unsuitable.

Even assuming that the claimant did articulate good cause for resigning, in order to be eligible for benefits, she must also show that she took reasonable steps to preserve her employment or otherwise believed such efforts would be futile. Guarino v. Director of the Div. of Employment Security, 393 Mass. 89, 94 (1984). The claimant did not ask for the General Manager's assistance in resolving her concerns about her added duties or any potential changes to schedule or pay, even though they spoke the night before the claimant failed to show up for work. Consolidated Findings ## 31, 32 and 39. Additionally, there is no indication that the claimant ever discussed her concerns about having to take on additional cosmetology duties with the owner. *See* Consolidated Findings ## 22–25. As the claimant had a close relationship with both the owner and the General Manager, nothing in the record suggests that any efforts to work with either person would have been futile. *See* Consolidated Findings ## 5, 6, and 15.

We, therefore, conclude as a matter of law that the claimant did not establish good cause attributable to the employer to resign 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 ending June 14, 2020, 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.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 28, 2021**



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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)**

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 contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

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](http://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