

**The claimant had good cause attributable to the employer to quit after his employer reduced his hours and, consequently, his wages by 50 to 63 percent, as this constitutes 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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Member  
Michael J. Albano  
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**Issue ID: 0054 7971 19**

### 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 filed a claim for unemployment benefits with the DUA with an effective date of March 15, 2020. On September 20, 2020, he resigned from his position with the employer. The DUA subsequently issued a determination denying benefits to the claimant on October 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 affirmed the agency's initial determination and denied benefits in a decision rendered on July 1, 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. 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 did not have good cause to leave his employment after his hours were reduced, is supported by substantial and credible evidence and is free from error of law, where the claimant's hours were reduced by at least fifty per cent and there is no indication in the record that his hours would be restored.

### 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 route driver for the employer, a vending machine service company, from August 19, 2019 until September 20, 2020, when he separated.
2. The claimant had a supervisor.
3. In April 2020, the claimant's hours were reduced to 15-20 hours per week because of the COVID-19 pandemic.
4. The claimant talked to his supervisor about disliking the reduction in hours and getting more hours, but the supervisor told the claimant that because of the COVID-19 pandemic, the employer's business had slowed and they could not offer him more hours at that time.
5. The claimant believed he was "wasting his time" and was depressed about the lack of work. The claimant did not seek mental health treatment for depression.
6. On or about September 13, 2020, the claimant was thinking about quitting because he wanted a better job but did not have time to look for one while he was working for the employer.
7. On September 20, 2020, the claimant drove to the workplace. Before walking in the door, the claimant decided he was not making enough money to support himself and that the job was "not worth it" and drove away from the workplace.
8. The claimant believed he would have more time to find a better job if he were no longer working for the employer.
9. On or about September 20, 2020, the claimant quit his employment when he decided his job was "not worth it" and drove away from the workplace.
10. The claimant did not have an offer of new work by September 20, 2020.
11. The claimant did not talk to his supervisor prior to quitting his employment.
12. The claimant did not know if the employer had a human resources department.

### 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 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 that the changes to the terms of the claimant's employment did not give the claimant good cause to leave his employment.

Because the claimant quit his employment, we analyze his eligibility for benefits 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 . . . .

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 in April, 2020. Specifically, the claimant's full-time schedule of 40 hours per week was reduced to 15 to 20 hours per week, which constitutes a 50 to 63 percent reduction to his hours of work and, consequently, his wages.<sup>1</sup> See Findings of Fact ## 3 and 4. The review examiner found that the claimant chose to resign on September 20, 2020, instead of continuing to work the reduced schedule, because the job was not worth it given that the claimant was not making enough money to support himself. See Findings of Fact ## 7 and 9.

The above findings establish that the change to the claimant's hours and wages was detrimental to the claimant's livelihood. In our view, a reduction of 50 to 63 percent to the claimant's wages constitutes a substantial reduction to his compensation. 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.

The review examiner concluded that the claimant did not take reasonable steps to preserve his employment, as he did not attempt to speak to the employer about his hours on September 20, 2020. We disagree with this conclusion, as the record before us establishes that any attempts by the claimant to preserve his employment on that date would have been futile. 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).

Specifically, the review examiner found that the claimant had previously questioned the reduction to his hours and the employer informed him that it would not be able to offer him more hours until business improved. See Finding of Fact # 4. Further, there is no indication in the record that, as of September 20, 2020, the employer had made any suggestion to the claimant that his previous full-time schedule would be restored or that any type of increase to his hours was imminent. Based on the above, we can reasonably infer that the claimant did not follow-up with the employer about his hours on September 20<sup>th</sup>, because he believed there was nothing else that he could do to return to his previous full-time schedule. Furthermore, the totality of the evidence in the record supports the conclusion that such a belief on the claimant's part was reasonable.

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<sup>1</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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 ending September 26, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 27, 2021**



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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](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.

SVL/rh