

**The claimant did not have good cause attributable to the employer to quit, where she left work to pursue other employment that had not yet been offered to her. However, where the employer reduced her hours prior to the end of her notice period, she is eligible for benefits during those two weeks.**

**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: 0060 3808 37**

### 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 her position with the employer on April 11, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 5, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 12, 2022. 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 remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's workload and earnings. 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 resigned from her employment without good cause attributable to the employer, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant gave her resignation without a new job offer and her hours had not been reduced until she gave her notice.

### Findings of Fact

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

1. The claimant is a registered nurse. The claimant's license was suspended in June, 2017 due to [a] narcotic documentation error relating to alcoholism.
2. The claimant was employed as a community-based recovery services coordinator (coordinator) for the employer, a human health agency, from April, 2019 until April 11, 2020, when she separated.
3. The claimant worked full-time (40 hours) Monday through Friday from 8:00 a.m.-4:30 p.m., earning \$14.50 per hour.
4. The claimant's immediate supervisor was the program director (supervisor).
5. The employees, including the claimant, would be assigned new clients by going to the inpatient department and signing up new patients.
6. During the week ending February 29, 2020, the claimant worked forty (40) hours, earning \$580.00.
7. During the week ending March 7, 2020, the claimant worked forty (40) hours, earning \$580.00.
8. During the week ending March 14, 2020, the claimant worked forty (40) hours, earning \$580.00.
9. On March 17, 2020, the supervisor informed the employer that he was resigning effective April 10, 2020.
10. On March 21, 2020, during an employee meeting, the program manager told the employees, including the claimant, that employees would no longer be meeting in-person with the clients due to the COVID-19 pandemic.
11. During the week ending March 21, 2020, the claimant worked forty (40) hours, earning \$580.00.
12. During the week ending March 28, 2020, the claimant worked forty (40) hours, earning \$580.00.
13. During the week ending April 4, 2020, the claimant worked forty (40) hours, earning \$580.00.
14. At no time prior to April 3, 2020, did anyone in management tell the claimant that her job or the program would have been [sic] closed or eliminated because of the COVID-19 pandemic.
15. At no time prior to April 3, 2020, did the claimant asked [sic] for any increase in her workload.

16. The claimant did not ask her supervisor or anyone in management if the cancellation of in-person client visits was temporary or permanent.
17. Prior to April 3, 2020, the claimant spoke with a nurse manager (from another department with the instant employer) about a nursing job while they were in a parking lot. During that conversation, the claimant was not offered a job by the nurse manager.
18. On April 3, 2020, the claimant had a regular case load of eighteen (18) to twenty-four (24) clients.
19. A day or two before April 3, 2020, the claimant spoke to the supervisor and told him that she was planning to resign her position. The supervisor told her that she should submit the resignation to him in writing so that he could finish the paperwork for her before he left. He did not give her a date to submit the resignation.
20. On April 3, 2020, the claimant voluntarily sent an email to the supervisor resigning her position effective April 17, 2020.
21. During the week ending April 11, 2020, the claimant worked 31.75 hours, because her cases were closed after her [sic] she resigned on April 3, 2020. The claimant earned \$460.38 during that week.
22. During the weeks ending February 29, 2020, through the week ending April 11, 2020, there was no reduction in the claimant's salary or work hours, or workload because of the COVID-19 pandemic.
23. The claimant did not have a job as [a] nurse in another department with the instant employer prior to resigning.
24. After April 3, 2020, since the claimant had resigned, she was not assigned any new patients.
25. On April 8, 2020, the claimant met with the employer's nurse manager (nurse) and was offered a job pending approval from the Board of Registration in Nursing, regarding the substance and abuse rehabilitation program.
26. When an employee applies for a status change to per diem, the request form is signed by both the current and new supervisor.
27. On April 11, 2020, the claimant, who was still planning on resigning, was told to return the employer's equipment so that it would be assigned to someone else.
28. The claimant did not work in her position after April 9, 2020.

29. The claimant was employed as a nurse in another department with [the] instant employer in November, 2020.

30. During the week ending April 18, 2020, the claimant did not work any hours or have any wages because she had already separated from the employer.

Credibility Assessment:

During the remand hearing, the claimant testified that her clients were reduced from fifteen (15) to twelve (12) or ten (10) clients and she was struggling to meet the hours. However, the evidence has established that there was no reduction in the claimant's work hours or salary because of the COVID-19 pandemic, whether before or after the announcement that the employees would no longer be working in-person. The evidence also established that the claimant continued working the same hours until her resignation, after which the hours worked was reduced to 31.75 hours because her cases were reassigned due to her resignation.

Additionally, while the claimant testified that there was talk among the employees that the positions would have been terminated, she admittedly did not hear or receive any notification from anyone in management that her job or the program would have been closed because of the COVID-19 pandemic. Furthermore, while the claimant testified that she was being proactive by seeking another job, the claimant admittedly did not speak to her supervisor or anyone in management about increasing her workload, nor did she ask the supervisor or anyone in management whether the cancelation of in-person client visits would have been permanent or temporary.

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.

Because the claimant resigned from her position with the employer, her separation will be 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary. . . .

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

The express language in these provisions places the burden of proof upon the claimant.

There is no indication in the record that the claimant resigned from her position with the employer due to an urgent, compelling, and necessitous reason.

After remand, the review examiner found that, at the time the claimant submitted her resignation on April 3, 2020, she was pursuing another employment opportunity, but that job had not yet been offered to her. *See Consolidated Findings ## 17, 20, 23 and 25.* In light of these findings, we also cannot conclude that the claimant left her employment in good faith to accept new employment that was subsequently terminated for good cause attributable to the new employer.

In order to show that she left her employment for good cause attributable to the employer, the claimant must first establish that she had a valid workplace complaint that led to her decision to resign. *See Graves v. Dir. of Division of Employment Security*, 384 Mass. 766, 768 (1981) (citation omitted). 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).

As noted in the credibility assessment, the claimant contended that her work hours were reduced due to changes resulting from the COVID-19 pandemic and that there was "talk" among the employees that the program she worked in could close due to the pandemic. However, after hearing the parties' testimony and reviewing the claimant's pay stubs during the remand hearing, the review examiner found that neither the claimant's work hours nor her workload were reduced due to the COVID-19 pandemic. *See Consolidated Findings ## 18 and 22.* Furthermore, no one in management informed the claimant or other employees that their program would be closed down and that they would lose their jobs due to the pandemic. *See Consolidated Finding # 14.* Thus, there is no basis to conclude that she left her job due to a reasonable belief that she would be imminently terminated due to a lack of work or another reason. *See White v. Dir. of Division of Employment Security*, 382 Mass. 596, 597-598 (1981).

The claimant continued to work her regular 40-hour week through the week ending April 4, 2020. Thereafter, her cases and work hours were only reduced because she had to close her current cases and could not receive new patients after she submitted her resignation on April 3<sup>rd</sup>. *See Consolidated Findings ## 6-8, 11-13, 18, 21 and 24.* Because the reduction in hours took place *after* she gave the employer notice that she was leaving, it is evident that it was not her reason for resigning. We see nothing unreasonable in the employer's behavior. Rather, the totality of the evidence establishes that the claimant resigned from her employment to pursue other employment, a circumstance which does not constitute good cause attributable to the employer.

We do note, however, that the claimant was willing and available to continue working her full-time hours until April 17, 2020. *See Consolidated Finding # 20.* Since the employer offered her fewer hours during the week ending April 11, 2020, and no hours in the subsequent week, the

claimant may be eligible for benefits during these two weeks.<sup>1</sup> See Consolidated Findings ## 27–28.

We, therefore, conclude as a matter of law that the claimant voluntarily left employment without good cause attributable to the employer, as meant under G.L. c. 151A, § 25(e)(1).

The review examiner’s decision is affirmed in part and reversed in part. We reverse the portion of the decision denying benefits to the claimant during the weeks ending April 11, 2020, and April 18, 2020; the claimant is entitled to benefits during these two weeks if otherwise eligible. We affirm the review examiner’s decision that the claimant is not entitled to benefits beginning April 19, 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 - August 19, 2022**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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 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

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<sup>1</sup> There is no indication in the record that the claimant did anything which would cause her to be disqualified under G.L. c. 151A, § 25(e)(2).