The employer's 25% reduction in hours created good cause attributable to the employer to resign within the meaning of G.L. c. 151A, § 25(e)(1), after the claimant requested on multiple occasions that her hours be restored and there was no indication that the hours would be increased again.

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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 her position with the employer in April, 2021, and re-opened a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 24, 2021. 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 May 6, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without 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 claimant did not have good cause to leave her employment after her 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 twenty-five percent and there is no indication in the record that her hours would be restored.

Findings of Fact

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

1. Beginning in June 2015, the claimant worked full-time (40 hours weekly) as an accounts payable associate for the employer, a recycling company.

2. The claimant's responsibilities were administrative and included issuing payments to vendors and processing invoices. The claimant worked Monday through Friday from 8:00 a.m. to 5:00 p.m. The claimant's rate of pay was $19.50.

3. The claimant's direct supervisor was the employer's chief financial officer (CFO).

4. On or about April 2020, due to the COVID-19 public health emergency, the employer had fewer sales, resulting in fewer invoices and less paperwork, and a lack of work.

5. On April 24, 2020, due to the lack of work, the employer's human resource manager (manager) gave the claimant the option to continue working for the employer at a reduced schedule of Monday through Friday from 10:00 a.m. to 2:00 p.m. from home or be laid off on a temporary furlough. The manager told the claimant, via email, that the reduction in hours was a "temporary solution to the reduction in sales and volume.…Every two weeks the [employer's] owners will reevaluate this situation, it is not permanent."

6. On April 27, 2020, the HR manager emailed the claimant, "if you do not want to work the reduced hours you will be furloughed…remember this furlough is temporary until it starts to pickup." The claimant declined the furlough and chose to continue working part-time for 20 hours a week.

7. Beginning the week of April 26, 2020, the claimant worked 20 hours a week, Monday through Friday from 10:00 a.m. to 2:00 p.m. and her gross wages were $330.00 per week.

8. On or about the end of May 2020, the employer increased the claimant's hours to 30 hours a week. The claimant began working from 8:00 a.m. to 2:00 p.m., Monday through Friday.

9. Due to the reduction in hours, the claimant filed an initial claim for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective date of May 31, 2020. The DUA determined the claimant's weekly benefit amount was $400.00 and her earnings disregard was $133.33.

10. The claimant began filing weekly certifications requesting unemployment benefits. For those weeks the claimant worked at least 28 hours, her gross weekly wages exceeded her weekly benefit amount plus her earnings disregard, and she was not eligible for unemployment benefits. The claimant was very frustrated that she was not eligible for unemployment benefits.

11. On December 1, 2020, the CFO sent an email to the claimant and other members of the employer's accounting department, that beginning the week of

December 7, 2020, the claimant and her salaried coworker would work in the office on alternating days. The email including [sic] the following language, "We [the employer] will continue to evaluated the COVID situation and adjust the schedule accordingly, as needed."

12. Beginning the week of December 6, 2020, the claimant worked in-person on Tuesdays, Thursdays, and every other Friday.

13. On or about February 15, 2021, the claimant asked the manager and the CFO, if she could return to working 40 hours a week. The employer did not have enough work available for the claimant to return to work full-time. The CFO and the manager told the claimant that, at that time, there was not enough work available for her to return to working full-time. The claimant requested time off beginning March 29, 2021 through April 2, 2021 to travel to Florida, which the manager and CFO approved.

14. From March 29, 2021, through April 2, 2021, the claimant was in Florida.

15. On April 12, 2021, after speaking with her family and friends, the claimant decided to quit her employment.

16. On or about April 14, 2021, the claimant told the manager in person that she quit her employment and left the office. On April 18, 2021 [sic], the claimant quit her employment due to the reduction in hours.

17. On May 31, 2021, the claimant moved to Florida with her adult son. The claimant lived in Florida for over a decade before moving to Massachusetts.

18. The claimant never told the employer she was considering quitting her employment.

19. After February 2021, the claimant never discussed her reduced schedule with the employer.

20. The claimant's reduced schedule was not permanent.

21. The claimant did not provide the employer with any time to address her concerns before quitting her employment.

22. At the time the claimant quit, there was work available.

23. The employer never told the claimant she was going to be fired.

24. The claimant did not quit her employment due to mistreatment.

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. After such review, the Board adopts the review examiner's findings of fact, with the exception of Finding of Fact # 16, to the extent it contains two separation dates. Both the record and the employer's reported separation date to the DUA show that the claimant separated on April 14, 2021. In adopting the remaining findings, we deem 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 her employment.

Because the claimant resigned from her position, her eligibility for benefits is 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 statutory language of these provisions places the burden of proof upon the claimant.

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 brought about by the COVID-19 public health emergency, the employer was prompted to change the terms of the claimant's employment in April, 2020. Findings of Fact ## 4–5. As a result, the claimant's full-time schedule of 40 hours per week was initially reduced to 20 hours per week, which constitutes a fifty-percent reduction to her hours of work and, consequently, her wages. Finding of Fact # 7. Subsequently, the employer increased the claimant's work schedule from 20 to 30 hours per week as of May, 2020. Finding of Fact # 8. However, the claimant's weekly hours of work were still twenty-five percent fewer than her original full-time schedule of 40 hours per week, and the record establishes that the claimant continued working a schedule of 30 hours per week from May, 2020, until she resigned in April, 2021, nearly one year later.

In her decision, the review examiner concluded that the employer's reason for imposing a unilateral reduction in hours was logical, due to the ongoing COVID-19 public health emergency at the time. While this may be true, even a legitimate business decision (here, reducing the claimant's hours due to lack of work) can give a claimant good cause for quitting, as shown by previous Board decisions and settled case law. A reasonable business decision by an employer to make a substantial change to a claimant's hours, pay, or benefits could create good cause to resign, because it renders the job no longer suitable to work. *See* Graves, 384 Mass. at 768 (1981) (substantial decline in wages may render job unsuitable). Applying Graves, the Board has held that an employer's drastic reduction in a claimant's hours rendered her position *per se* unsuitable. *See* Board of Review Decision BR-110763 (March 28, 2010) (claimant's hours cut in half). Under such circumstances, the employer unilaterally changes the fundamental conditions of a person's

employment relationship. The Massachusetts Appeals Court has also laid out a useful measure of what kind of reduction can be deemed to be "substantial." *See* North Shore AIDS Health Project v. Rushton, No. 04-P-503, 2005 WL 3303901 (Mass. App. Ct. Dec. 6, 2005), *summary decision pursuant to rule 1:28* (a 15% reduction in claimant's total compensation package created good cause for her leaving employment). Here, the claimant's hours were reduced by twenty-five percent as of May, 2020. Such a large reduction brings the circumstance within the ambit of "good cause," for purposes of the unemployment law.

In our view, a reduction of twenty-five percent to the claimant's wages constitutes a substantial reduction to her compensation. Although, as the review examiner noted, there is documentary evidence in the record suggesting that these changes to the terms of the claimant's employment would be temporary, the claimant was never informed as to when, or whether, her hours would increase again and had been told that there was not enough work for her to return to work on a full-time basis. *See* Finding of Fact # 15. Thus, the record supports a conclusion that the reduction in hours was indefinite, and the claimant had good cause attributable to the employer to leave her employment.

However, to be eligible for benefits, a claimant must also show that she made reasonable efforts to preserve her employment prior to resigning, or that such attempts would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93 (1984). Here, the review examiner concluded that the claimant did not take reasonable steps to preserve her employment after February, 2021, because she did not make subsequent attempts to speak to the employer about her hours. We disagree with this conclusion, as the record before us establishes that any attempts by the claimant to preserve her employment after February 15, 2021, would have been futile.

The review examiner found that, prior to resigning, the claimant had questioned the reduction to her hours and the employer informed her that there was not enough work available for her to return to work on a full-time basis. *See* Finding of Fact # 15. The claimant also testified that, prior to resigning, she had made several attempts to speak to her immediate supervisor, the president of the company, and human resources representatives about the possibility of working 40 hours per week again.[1] Further, there is no indication in the record that, as of February 15, 2021, the employer had made any suggestion to the claimant as to when her previous full-time schedule would be restored or that any type of increase to her hours was imminent. Based on the above, we can reasonably infer that the claimant did not follow up with the employer about her hours after February 15, 2021, because she believed that there was nothing else that she could do to return to her 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.

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

[1] 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); *see also* Exhibits 1 and 3 (claimant's fact-finding questionnaires, where claimant reported speaking to the employer prior to resigning).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning April 18, 2021[2], and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 24, 2024

Paul T. Fitzgerald, Esq.
Chairman

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)

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.

JMO/rh

[2] The hearing decision references a disqualification start date as April 18, 2022. We believe this to be a typographical error and have modified the date accordingly.