

Claimant, who was promised and was originally working ten hours a week, had good cause attributable to the employer to resign after his employer reduced his hours by nearly 50%. Where the claimant's first- and second-line managers confirmed that no additional hours were available, he satisfied the requirement to make reasonable efforts to preserve his employment before quitting.

**Board of Review
19 Staniford St., 4th 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: 0073 1677 35

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 separated from his position with the employer on August 27, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 30, 2022. 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 October 26, 2022. 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, even though the claimant's employer had substantially reduced his hours, he was not eligible for benefits because he had failed to take reasonable steps to preserve 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 for the employer, the operator of a chain of grocery stores, as a stock clerk in the meat department of one of the employer's stores.

2. The claimant had a psychiatric disability that limited the amount of time that he could reasonably work to about ten hours per week.
3. At the same time, the claimant did not want to work less than ten hours per week because he relied upon his earnings to pay his expenses.
4. Upon being hired by the grocery store, the claimant and the employer orally agreed that the claimant would work ten hours per week.
5. They did not specifically agree, however, that the amount of work would remain at ten hours per week.
6. When the claimant transferred from one store to another, he reiterated to the manager of the new department his preference to work ten hours per week, and the manager honored that request.
7. Again, it was not specifically agreed that the claimant would continue to work ten hours per week indefinitely.
8. The claimant initially worked two days per week, approximately five hours each day.
9. For the first ten weeks of his employment, the claimant's hours hovered around 10 hours per week with the predominant number being 10.25.
10. After the tenth week, *i.e.*, the week ending May 8, 2021, the claimant's hours were cut in half.
11. After May 8, 2021, the claimant's hours hovered between 5.0 and 5.5 hours per week for all weeks except one, in which they were 10.25 hours.
12. After his hours were reduced, the claimant spoke to both the manager of the meat department and the assistant store manager to request additional hours.
13. The claimant's requests were denied because there were not enough hours available.
14. In other words, the employer denied the request for business reasons.
15. After several weeks of reduced hours and having arranged another job, the claimant quit his job, effective August 27, 2021.
16. The claimant worked at the new job for ten hours per week.
17. The new job did not work out, so the claimant went to a third employer, also at ten hours per week.

18. The claimant claimed unemployment benefits for two weeks, one for the week ending September 25, 2021, and the other for the week ending October 23, 2021.
19. By Notice of Disqualification dated March 30, 2022, the claimant was denied benefits on the basis that he had quit his job with the employer because of job dissatisfaction.

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 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 claimant is not entitled to benefits.

Because the claimant resigned from his employment, his eligibility for benefits is governed by the following provisions of G.L. c. 151A, § 25(e), which provide, in pertinent part:

[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.

The express language of these statutory provisions place the burden of proof upon the claimant.

The claimant resigned from his position after the employer reduced his hours from an average of approximately ten hours a week, to an average of just over five hours a week. Findings of Fact ## 9–11. For some reason, the review examiner inaccurately characterized this situation as constituting urgent, compelling, and necessitous reasons for the claimant's resignation. We view his separation differently. An employer's business decision to make a substantial change to a claimant's hours, pay, or benefits may create good cause to resign if it renders the job no longer suitable to work. See Graves v. Dir. of Division of Employment Security, 384 Mass. 766 (1981) (substantial decline in wages may render job unsuitable).

In applying Graves, the Board has held that an employer's decision to drastically reduce a claimant's hours may render his position unsuitable. See e.g., Board of Review Decision BR-110763 (March 28, 2010) (claimant's hours cut in half). As the claimant's hours were cut by nearly 50%, there is no doubt he experienced a substantial decline in wages, even when viewed in the context of the claimant's already limited schedule. 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). Accordingly, we conclude that the claimant has shown good cause for resigning attributable to his employer.

While the review examiner accepted the claimant's reason for resigning, he determined that the claimant was ineligible on the grounds that the claimant had failed to take reasonable steps to preserve his employment. We disagree.

As a general rule, a claimant must make a reasonable effort to preserve his employment before quitting, even if he otherwise has a good reason to leave. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93-94 (1984). In this case, the claimant contacted both his first and second-line supervisors upon learning that his hours were being reduced and was told by both individuals that the employer could not offer him more hours. Findings of Fact ## 12 and 13.

Even if the claimant had not been contractually guaranteed 10 hours of work a week, the record confirms that the employer willingly accommodated the claimant's request to work ten hours per week for ten weeks, including after he transferred to a new location. Findings of Fact ## 4-7. The claimant accepted this job with the understanding that he would be working approximately ten hours per week. Since both managers confirmed that no additional work would become available to the claimant after his hours were substantially reduced, we conclude that the claimant made reasonable efforts to preserve his employment, and that further efforts would have been futile.

We, therefore, conclude as a matter of law that the claimant has shown that he left his employment for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1), and that he made reasonable efforts to preserve that employment prior to resigning.

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning the week of August 22, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 15, 2022



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.

LSW/rh