An employer who unilaterally reduced the claimant's schedule by more than half created good cause attributable to the employer for the claimant to resign from her position. She is eligible for benefits under G.L. c. 151A, § 25(e)(1).

Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Issue ID: 0077 1478 06

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 June 2022. She filed a claim for unemployment benefits with the DUA, effective June 5, 2022, which was denied in a determination issued on July 6, 2022. 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 November 19, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant voluntarily quit employment for reasons not attributable to the employer, where she quit after her hours were unilaterally reduced, 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 part-time for the instant employer, [a] residential care provider for disabled individuals, as a relief care attendant from February 8, 2022 to May 17, 2022.

2. At hire, the claimant was aware her position was relief staff, and she was not promised or contracted for a specific number of hours per week. The claimant was hoping to get a permanent position when one opened-up.

3. The claimant's duties included working at a residential home with four disabled individuals Monday through Thursday from 9:00 a.m. to 3:00 p.m. and Friday from 9:00 a.m. to 1:00 p.m. She assisted with daily living tasks and house chores as needed.

4. On May 17, 2022, the claimant sprained her back while at work transferring a client from his wheelchair to a couch.

5. From May 19, 2022, to May 26, 2022, the claimant was out of work on medical leave due to her back injury.

6. On or about May 20, 2022, the claimant provided written documentation of the medical diagnosis and a return-to-work date of May 27, 2022, to both her direct supervisor at the residential home and the main office of the employer.

7. After May 27, 2022, the claimant contacted her direct supervisor to ask about her schedule. The claimant was informed that the supervisor was waiting to hear back from the main office.

8. The first week in June, the claimant was told that she would not be put back onto the schedule to work until June 12, 2022. The claimant was also informed by her direct manager that the schedule was full, and she could only offer the claimant working hours one day a week.

9. The claimant enjoyed her job and wanted to work for this employer, but the limited hours available for her was not sustainable for her income.

10. On June 8, 2022, the claimant filed for Unemployment Insurance benefits with an effective date of June 5, 2022.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. Based on the claimant's testimony, we reject the portion of Finding of Fact # 8, which states that the claimant was told that she would not be put back on the schedule until June 12, 2022, because the claimant testified that she was told during the week of June 12, 2022 that the next available shift was June 25, 2022.[1] 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

[1] While not explicitly incorporated into the review examiner's findings, the claimant's testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

examiner's legal conclusion that the claimant did not quit for good cause attributable to the employer.

Because the claimant resigned from her employment, her eligibility for benefits is governed by 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 she 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 her reasons for leaving were for such an urgent, compelling and necessitous nature as to make her separation involuntary.

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

When a claimant contends that the 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 concluded that the claimant did not separate for good cause attributable to the employer. We disagree.

The last day that the claimant physically worked with the employer was on May 17, 2022. Finding of Fact # 1. The claimant was out of work due to a back injury for one week from May 19, 2022, until May 26, 2022. Finding of Fact # 2. She was never placed on the schedule after May 27, 2022, and was informed by her supervisor that the employer only had one day of work per week available for her beginning June 25, 2022. Finding of Fact # 8. One day of work per week was not financially sustainable for the claimant, so she resigned. Finding of Fact # 9. She had been working 28 hours per week since being hired three months earlier. *See* Finding of Fact # 3. This reduction to one day a week was a reduction of about 78%. Moreover, the employer's inability to put her immediately back on the schedule would have meant that she had no hours at all for approximately four weeks if she decided to accept the next shift available on June 25, 2022. *See* Findings of Fact ## 7–8.

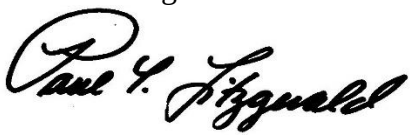
The Supreme Judicial Court has held that a substantial decline in wages may render a job unsuitable and constitute good cause attributable to the employer to resign under G.L. c. 151A, § 25(e)(1). Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 (1981) (citation omitted). In applying Graves, the Board has held that an employer's decision to drastically reduce a claimant's hours may render her position unsuitable. *See e.g.*, Board of Review Decision BR-110763 (March 28, 2010) (claimant's hours cut in half). Similarly, in the present case, the employer's reduction of the claimant's hours by over 50% rendered the job unsuitable. Accordingly, the claimant has shown good cause attributable to her employer to resign.

The next issue to address is whether the claimant made a reasonable attempt to preserve her employment prior to quitting. The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made

a reasonable attempt to correct the situation, or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). In this case, the claimant testified that she spoke with her supervisor, who was also the manager and the person responsible for scheduling, about her hours but was told there was only one day of work per week available for her. Finding of Fact # 8.[2] From her supervisor's response, the claimant could reasonably infer that further efforts to ask for more hours would be futile, since the schedule was already full. *See* Finding of Fact # 8. Under these circumstances, we believe that the claimant made a reasonable effort to preserve her employment.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she had good cause attributable to the employer to quit her position within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period beginning June 5, 2022, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - May 25, 2023

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.

[2] During the hearing, the claimant explained that her supervisor was also the manager in charge of scheduling. This testimony is also part of the unchallenged evidence in the record.

MR/rh