

**Substantial pay disparity between equally credentialed and experienced pilates instructors constituted good cause attributable to the employer to resign, where the employer declined to remedy the wage difference after the claimant brought the problem to the employer's attention. Held she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0079 4029 60**

### 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 on February 1, 2023. She filed a claim for unemployment benefits with the DUA, effective February 19, 2023, which was denied in a determination issued on April 4, 2023. 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 June 1, 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, she was disqualified pursuant to 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 did not have good cause attributable to the employer to resign, is supported by substantial and credible evidence and is free from error of law, where the record showed that she was paid at a lower rate than colleagues with the same job and credentials.

### Findings of Fact

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

1. The claimant filed a claim for unemployment benefits effective February [19], 2023. The claimant worked for three employers, one of which was the instant employer, during the base period of the claim that extended from January 1, 2022, until December 31, 2022. The claimant earned the highest wages working for the instant employer during the base period.

2. The claimant worked part time as a senior Pilates instructor for the employer, a wellness center, from March 8, 2019, until February 1, 2023, when she quit work.
3. The claimant did not have a set schedule of hours.
4. The claimant inserted her availability into the employer's scheduling software application, and she would be assigned clients based on her availability.
5. Each new client would receive a complimentary (free) session.
6. The claimant was paid \$17.00 for complimentary sessions.
7. The claimant was paid a set rate for private one on one sessions, which were 55 minutes in length.
8. At the start of her employment, the claimant was paid \$44.50 per private session.
9. In January 2022, all Pilates instructors were given a \$2.00 raise per session. The claimant's private session pay increased to \$46.50.
10. The claimant's immediate supervisor was the Pilates Manager.
11. In the summer of 2022, the claimant learned through discussions with co-workers that other senior Pilates instructors made more money than her per private one on one sessions.
12. The claimant is Asian Chinese.
13. An African American senior Pilates instructor told the claimant that she made less money per private session than the claimant.
14. A Caucasian senior Pilates instructor that worked at the center for less time than the African American instructor was paid \$52.00 per hour.
15. Another Caucasian senior Pilates instructor was paid \$60.00 per hour.
16. In July 2022, the Pilates Manager set up a meeting for the claimant with the employer's General Manager and the Human Resource Department to discuss the difference in pay of Senior Pilates Instructors.
17. The employer advised the claimant that when it acquired the club in 2014 from the prior Owner, the employer agreed not to decrease the pay of any employees transferred over in the acquisition.

18. The claimant objected to the Caucasian instructors being paid more than herself and the other minority Pilates instructor that worked for the employer.
19. The claimant looked for work at other Pilates center.
20. The claimant began a new part time job as a Pilates instructor for another employer in 2022. The new employer did not offer complimentary sessions. The claimant was paid \$60.00 for each private session, \$70.00 for a duo session and \$80.00 for a trio session. After the claimant built up her client base to 8 hours a week, she quit work with the instant employer.
21. The claimant wouldn't have quit work if she hadn't found new employment and built a sufficient client base.
22. On January 10, 2023, the claimant notified the Pilates Manager and the Assistant General Manager that she was quitting work.
23. On January 11, 2023, the claimant notified the General Manager in writing that she quit work effective February 1, 2023.
24. The claimant quit work due to "racial pay disparity."
25. On March 1, 2023, the claimant filed a complaint against the employer for racial pay disparity with the EEOC.
26. On April 4, 2023, the Department of Unemployment Assistance issued the claimant a Notice of Disqualification under Section 25(e)(1) of the Law for the week beginning January 29, 2023 (the determination).
27. The claimant appealed the determination.

### 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. The reference to being paid per hour in Findings of Fact ## 14 and 15 appears to be a scrivener's error, as the only evidence in the record is that the Pilates instructors were paid per session, not by the hour. 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 claimant is ineligible for benefits.

Because the claimant resigned from her employment, her eligibility for benefits is properly analyzed pursuant to 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 . . . [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 places the burden of proof upon the claimant.

In this case, the claimant resigned because of an alleged racial pay disparity. Finding of Fact # 24. In the summer of 2022, the employer paid the claimant \$46.50 per client session as a Senior Pilates Instructor. *See* Findings of Fact ## 2 and 9. She learned that another Senior Pilates Instructor was paid even less. Finding of Fact # 13. The claimant is Asian Chinese and this other instructor is African American. *See* Findings of Fact ## 12 and 13. At that time, she also learned that two other Senior Pilates Instructors, both of whom were Caucasian, were being paid \$52.00 and \$60.00 per client session. Findings of Fact ## 14 and 15.

Further, the claimant's EEOC complaint reveals that only five Senior Pilates Instructors worked at this employer location, one of whom was a manager.<sup>1</sup> This means that half of the Senior Pilates Instructor staff at the same workplace were paid more than the claimant for the same work. *See* Findings of Fact ## 12–15. Specifically, the employer paid the claimant 11 to 23% less than her Caucasian coworkers, even though they were all Senior Pilates Instructors. *See* Findings of Fact ## 9, 14, and 15.

When she complained to the employer about the difference in pay, a Human Resources representative advised the claimant that when the employer purchased the business from its predecessor in 2014, it came with a stipulation that they could not decrease the pay of any employees. *See* Findings of Fact ## 16–18. After this meeting, the record indicates that the employer did not change anything, and that the disparity continued.

We need not decide whether this compensation practice rises to racial discrimination under federal law. The question before us is simply whether the claimant is eligible for unemployment benefits. 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).

We understand that, in 2014, when the employer purchased the business from its predecessor, it was contractually obligated to maintain the transferred employees' pay rate. *See* Finding of Fact # 17. However, this 2014 grandfathering provision does not mean that they were contractually obligated to pay all other Senior Pilates Instructors less money just because they were hired directly. We can reasonably infer that the employer was also not contractually bound to continue paying its Pilates instructors different wage rates indefinitely.

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<sup>1</sup> *See* Exhibit 1, the EEOC complaint signed by the claimant on March 1, 2023. 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).

Eight years after the employer acquired the business, the pay disparity remained. *See* Findings of Fact ## 9–17. Nothing in the record indicates that the higher paid instructors had more experience, credentials, or tenure. In fact, the lower paid African American colleague had been working there longer than one of the higher paid Caucasian instructors. *See* Findings of Fact ## 13 and 14. In our view, once the claimant brought the pay disparity to the employer’s attention, its failure to take any steps to remedy the situation was unreasonable.

To be eligible for benefits, the claimant must also show that before resigning, she took reasonable steps to correct the situation or show that such attempts would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). Given the claimant’s attempt to address her concerns with the General Manager and the Human Resources Department, we are also satisfied that she made a reasonable effort to preserve her job and that further attempts would have been futile.

We, therefore, conclude as a matter of law that the claimant resigned for good cause attributable to the employer as meant under G.L. c. 151A, § 25(e)(1).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning February 19, 2023, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 30, 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](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.

AB/rh