The employer's offer of a full-time schedule directly conflicted with the claimant's childcare obligations. As the employer would not allow her to continue performing her work part-time and it did not offer her any other work, she had good cause attributable to the employer to resign because the job had become unsuitable. She is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

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Issue ID: 0080 7995 96

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 her position with the employer on June 19, 2023. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 21, 2023. 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 August 26, 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). 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 had not shown that her childcare needs and general dissatisfaction with her commute constituted urgent, compelling, and necessitous reasons for resigning and had not taken reasonable steps to preserve her 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 last worked part time as a special education teacher for the employer, a charter school system, from September, 2018 until June 19, 2023.

2. The claimant was hired as a full-time special education teacher at the charter high school.

3. The employer offered a new contract of employment to the claimant for each school year for which she was employed.

4. The claimant is not guaranteed an offer of employment each school year.

5. The claimant has two children, ages 1 and 3, and is currently pregnant with her third child.

6. For the 2022/2023 school year, the claimant asked her immediate supervisor, the principal, if she could work part time due to childcare issues. The principal agreed to allow the claimant to work part time for the school year in elementary school. The elementary school did not previously have a special education teacher. The principal told the claimant that in following years, the special education teacher would be a full-time position.

7. In the 2022/2023 school year, the employer had approximately 100 special education students enrolled.

8. For the 2023/2023 school year, the employer's special education enrollment increased to 200 students.

9. The claimant began Paid Family Medical Leave on March 15, 2023. The claimant remained out of work for the rest of the school year.

10. In mid-June 2023, the claimant attended an end-of-year meeting with the principal. One issue discussed was whether the claimant would be interested in returning to work for the 2023/2024 school year. An offer of full-time employment was made to the claimant by the employer for the 2023/2023 school year.

11. The claimant declined the offer of full-time employment due to ongoing childcare issues. The claimant told the principal that she could continue to work in a part time position.

12. The employer did not have a part-time position available to the claimant as a special education teacher.

13. The position of special education teacher cannot be performed remotely.

14. The employer has some positions that are part time.

15. The claimant did not inquire if there were any other part-time positions available to her.

16. The claimant has a substantial commute to work.

17. The claimant did not intend to return to work for the employer.

18. The claimant did not request a leave of absence.

19. The claimant resigned her position with the employer due to lack of childcare, commuting distance, and expecting a baby in September 2023.

20. On July 21, 2023, the DUA sent the claimant a request for additional information. The questionnaire sent read, in part, "List any other information you want us to consider about this issue:", to which the claimant responded, "... I asked to come back the same days and hours that I currently did this past school year 22-23. I was told they needed a full-time teacher and I was not reoffered the position or any position at all. ..."

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. We reject Finding of Fact # 17 as inconsistent with the evidence of record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, while we believe that the review examiner's findings of fact support the conclusion that the claimant's eligibility is properly analyzed under G.L. c. 151A, § 25(e)(1), we believe that the review examiner erred in denying the claimant benefits.

The review examiner analyzed the claimant's eligibility for benefits under the following provisions of G.L. c. 151A, § 25(e), which provide, 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.

Under this section of law, the claimant has the burden of showing that she is eligible to receive unemployment benefits.

Both at the hearing and on appeal, the claimant argued that she was discharged from her employment and her eligibility for benefits should, therefore, be analyzed under the provisions of G.L. c. 151A, § 25(e)(2). As it was the claimant's decision to decline the employer's offer of work as full-time special education teacher for the 2023–24 academic year, we believe that it was her decision that caused her own unemployment. Findings of Fact ## 3, 10, and 11. Accordingly, we

agree with the review examiner that the claimant's eligibility for benefits is properly analyzed as a resignation under the provisions of G.L. c. 151A, § 25(e)(1). However, we believe that the review examiner erred in denying the claimant benefits.

The claimant separated from her position with the instant employer when the 2022–23 academic year ended on June 19, 2023, because the employer offered her only full-time work in the next academic year. *See* Findings of Fact ## 1, and 10-12. "When a claimant loses [her] regular job because of a reduction in available work and refuses a job from the same employer, eligibility for unemployment benefits depends on whether the employee has refused an offer of suitable employment." Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 767 (1981). "Leaving employment because it is or becomes unsuitable is, under the case law, incorporated in the determination of 'good cause.' *See* Graves v. Dir. of Division of Employment Security, 384 Mass. 766, 768 n. 3 (1981)." Baker v. Dir. of Division of Unemployment Assistance, No. 12-P-1141, 2013 WL 3329009 (Mass. App. Ct. July 3, 2013), *summary decision pursuant to rule 1:28*. Thus, leaving employment due to a detrimental change by the employer of the conditions of employment that renders a job unsuitable constitutes leaving for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

The claimant bears the burden of showing that the full-time position teaching position she declined was not suitable work. "Suitability is not a matter of rigid fixation. It depends upon circumstances and may change with changing circumstances." Pacific Mills v. Dir. of Division of Employment Security, 322 Mass. 345, 350 (1948). In this case, the claimant was previously working a part-time schedule, but the employer was requiring her to work full-time during the 2023–24 academic year in order to remain employed as a special education teacher. Finding of Fact # 12. We, therefore, consider whether the change in schedule rendered the offered job unsuitable.

The review examiner found that the claimant declined the employer's offer of full-time work due to both a lack of childcare and her general dissatisfaction with the length of her commute. Finding of Fact # 19. We agree that a claimant's general dissatisfaction with the length of her commute is not evidence supporting a conclusion that a job is unsuitable. However, a review of the record demonstrates that Finding of Fact # 19 does not fully capture the claimant's testimony. The claimant explained that the length of her commute was a factor that exacerbated her childcare issues.[1]

The review examiner also denied the claimant benefits because she rejected the claimant's testimony that she would have returned to work for the instant employer as not credible. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by "substantial evidence.'" Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted). "Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" Id. at 627–628, *quoting* New

[1] The claimant's uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed into 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).

Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted). Upon review of the record, we do not believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

Specifically, the review examiner rejected the claimant's testimony that she would have returned to work for the instant employer in a part-time capacity on the grounds that the claimant's responses to a July 21, 2023, questionnaire were inconsistent with her testimony at the hearing. Specifically, the review examiner explained the claimant denied being offered any work in the July 21st fact-finding questionnaire, but contrarily confirmed at the hearing that the employer had offer her a full-time position. However, in the language quoted by the review examiner, the claimant explains that the employer told her, "they needed a full-time teacher." Finding of Fact # 20. Further, a review of the July 21st fact-finding questionnaire, which was admitted into evidence as Exhibit 7, shows that the claimant was explaining that the employer did not offer her the opportunity to return to her previous part-time position, or to work in any other part-time position for the 2023–24 academic year.[2] Thus, the claimant's responses to the July 21st fact-finding questionnaire are consistent with her testimony that the employer only offered her full-time work.

Despite these issues with several findings of fact, the review examiner properly found, based on the uncontested evidence of record, that the claimant declined the employer's offer of full-time employment because she was unable to obtain childcare that would allow her to work a full-time schedule. Finding of Fact # 11. Absent credible evidence suggesting that the claimant resigned for other reasons, we consider whether her inability to work a full-time schedule rendered the employer's offer of work unsuitable.

The parties agreed that the employer required the claimant transition to a full-time schedule if she wanted to remain in her position with the employer for the 2023–24 academic year. Findings of Fact ## 10 and 12. Because the employer insisted that the claimant work a schedule that, under the circumstances, she could not feasibly work, the employer's decision to change the position to a full-time schedule rendered the offer of work unsuitable for the claimant. *See* Board of Review Decision 0008 9717 26 (May 1, 2014) (the employer's unilateral change to the claimant's work schedule rendered that work unsuitable because it conflicted directly with the claimant's ability to obtain childcare).[3] As there is no indication that there was other suitable work available, we believe that the claimant met her burden to show that she separated from her employment with good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

We further believe that the review examiner erred in concluding that the claimant failed to take reasonable steps to preserve her employment because she had not requested either a leave of absence or a transfer to a different part-time position. To meet her burden, the claimant must show reasonable efforts to preserve her employment — not that she had "no choice to do otherwise." Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2006) (citation omitted). The Supreme Judicial Court has expressly rejected the notion that to be eligible for benefits, an employee is required to request a leave of absence. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984).

[2] Exhibit 7 is also part of the unchallenged evidence introduced in the hearing and placed into the record.

[3] Board of Review Decision 0008 9717 26 is an unpublished decision, available upon request. For privacy reasons, identifying information has been redacted.

While the claimant did not explicitly ask the employer about a transfer to a different part-time position, there was no dispute that she informed the employer she would be able to continue working for them in a part-time capacity. Finding of Fact # 11. Since the employer told the claimant that no such positions were available to her, she reasonably concluded that a transfer to a different position was not available. Finding of Fact # 12. Further, there was no indication from the record that an unpaid leave of absence of any duration would afford the claimant the opportunity to resolve her childcare issues such that she would then be able to return to full-time work. Under these circumstances, we believe that the claimant's efforts to preserve her employment were reasonable.

We, therefore, conclude as a matter of law that the claimant met her burden to show that she separated from her job for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of June 25, 2023, and for subsequent weeks if otherwise eligible.

Charlene A. Stawicki

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 5, 2023

Charlene A. Stawicki, Esq.
Member

Michael J. Albano
Member

Chairman Paul T. Fitzgerad, 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