Where retail salesperson's hours were cut from three shifts to two shifts per week, held he had good cause attributable to the employer to resign. A 33% cut was a substantial decline in wages. He was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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Member
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Member

Issue ID: 0080 8030 52

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 his position with the employer on May 31, 2023. He filed a claim for unemployment benefits with the DUA, effective July 16, 2023, which was approved in a determination issued on October 3, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 25, 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, he 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 attributable to the employer to resign even though he left because the employer cut his hours, 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 filed a claim for unemployment benefits with an effective date of July 16, 2023.

2. The claimant worked part time as a sales associate for the employer, a retail sales business from September 20, 2021, until May 31, 2023, when he quit work.

3. The claimant's availability for work was Monday through Friday from 10:00 a.m. to 5:30 p.m.

4. The claimant was paid $15.00 per hour.

5. The last day the claimant worked for the employer was May 30, 2023.

6. The claimant was scheduled to work 3 days a week for 5-hour shifts.

7. On May 12, 2023, the Owner notified the claimant via text message that his hours would be reduced because another employee with more seniority was returning to work.

8. During the week beginning May 22, 2023, the employer scheduled the claimant to work 2 5-hour shifts.

9. During the week beginning May 28, 2023, the employer scheduled the claimant to work 1 5-hour shift because the business was closed on Monday that week for the holiday.

10. On May 31, 2023, the claimant asked the Owner via text message not to schedule him for anymore shifts because he found new employment.

11. The claimant completed a Quit questionnaire for the Department of Unemployment Assistance. The claimant reported that he quit because he found new employment due to his hours being reduced. He also reported that he did not begin new employment.

12. On October 3, 2023, the Department of Unemployment Assistance (the DUA) issued a Notice of Approval of the claimant's eligibility for unemployment benefits under Section 25(e)(1) of the Law beginning May 7, 2023 (the Determination).

13. The employer 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. 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 disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant resigned from his employment, his 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 in these provisions places the burden of proof on the claimant.

Nothing in the record suggests that the claimant left his job due to urgent, compelling and necessitous reasons. Alternatively, we consider whether his reason for leaving was for good cause attributable to the employer.

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).

In this case, the review examiner concluded that the claimant left his job with the employer because his hours had been reduced. She found that the employer had been providing the claimant with 15 hours of work per week. *See* Finding of Fact # 6. This is supported by copies of the employee schedule for the weeks of May 1, 2023, and May 8, 2023, which show the claimant scheduled for three five-hour shifts in both weeks. *See* Exhibit 9.[1] However, on May 12, 2023, the owner notified the claimant that his hours would be reduced going forward because a more senior employee was returning. *See* Finding of Fact # 7. During the week of May 22, 2023, the employer scheduled the claimant for two five-hour shifts and the following week of May 28, 2023, the claimant was given only one five-hour shift due to the store closing on one day for the holiday. Findings of Fact ## 8 and 9. On May 31, 2023, the claimant resigned. *See* Finding of Fact # 10.

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 North Shore AIDS v. Rushton, the Massachusetts Appeals Court ruled that, relative to a modest $35,000 salary, a 16% reduction in pay was a substantial change to the terms and conditions of employment. No. 04-P-503, 2005 WL 3303901 (Mass. App. Ct. Dec. 6, 2005), *summary decision pursuant to rule 1:28*.

Here, the findings indicate that the claimant had been earning gross wages of $750 per week. *See* Findings of Fact ## 4 and 6. This is comparable to the salary noted in North Shore AIDS. Even

[1] Exhibit 9 includes photocopies of the employees' schedule for the four weeks of May 1, 8, 22, and 29, 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).

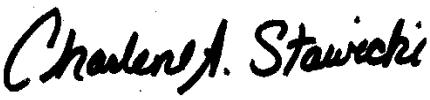
if we disregard the week of May 28th due to the holiday, the employer cut the claimant's regular hours by 33%. That amounts to a substantial reduction in pay.

However, our analysis does not stop here. 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 he 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). Although not in the findings, the employer testified that the claimant asked him on May 12, 2023, if he would eventually be put back on three shifts a week. The employer responded that it would be two, indicating that it was because another worker was returning. *See* Finding of Fact # 7.[2] In our view, this evidence shows that the claimant made a reasonable attempt to correct the situation before submitting his resignation.

In her decision, the review examiner denied benefits in part because she observed that the claimant could have continued working for the employer and filed a claim for partial unemployment benefits rather than resigning. This may be true, but it is not a basis to deny benefits. As long as the claimant has met his burden to show a substantial decline in wages and a reasonable effort to address the problem before leaving, he is entitled to benefits.[3]

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he resigned 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 beginning July 16, 2023, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - July 29, 2024

Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

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[2] This portion of the employer's testimony is also part of the unchallenged evidence in the record.

[3] The record indicates that the claimant chose to resign because he believed he had found a more lucrative landscaping job. The employer did not dispute this. *See* Finding of Fact # 10 and Exhibit 5, the claimant's responses to the DUA fact-finding questionnaire.

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.

AB/rh