The employer proposed to substantially reduce the claimant's hours and pay at the end of the month due to the claimant's poor attendance and failure to meet its production standards, unless he improved his attendance and production numbers. When the claimant abruptly resigned in response, it remained to be seen whether he could make such improvements and whether the employer would actually cut his hours and pay. He also did not take reasonable steps to preserve his employment prior to quitting, as he did not speak to his manager or human resources about the circumstances affecting his attendance and performance, nor explore alternatives to the proposed pay reduction. He is ineligible for benefits pursuant to 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: 0081 3148 43

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award 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 October 16, 2023. He filed a claim for unemployment benefits with the DUA, effective October 15, 2023, which was denied in a determination issued on November 18, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, and a continued hearing attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on February 2, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was not 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 employer's appeal, we remanded the case to the review examiner to afford the employer an additional opportunity to testify and provide other evidence. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. 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 voluntarily left employment for good cause attributable to the employer because his pay was going to be reduced and his benefits taken away, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time for the employer, a grocery store, from 11/27/07 to 10/15/23.

2. The claimant's rate of pay was $24.25 per hour, and he received benefits including health insurance, paid vacation and bonuses.

3. The claimant worked at the employer's warehouse. His supervisor was the warehouse manager.

4. The warehouse manager has the authority to discharge employees.

5. The claimant was hired to work as a selector.

6. Selectors start out working part-time. When they demonstrate the ability to pick the required piece count, they obtain full-time status. The required piece count is 200 cases per hour.

7. The claimant was scheduled to work 40 hours per week. His status was full-time.

8. The shifts available to selectors are 6:30 a.m. to 3:00 p.m. and 3:30 p.m. to 12:00 a.m. The claimant worked the evening shift from when he was hired to 2013 or 2014, then switched to the morning shift.

9. Starting in 2018 or 2019, the claimant was assigned selector duties part of the day and cleaning/maintenance duties part of the day. He preferred the cleaning/maintenance duties.

10. The employer hired part-time employees who do the cleaning and maintenance duties and the claimant returned to his selector duties, full-time, sometime in 2021 or 2022.

11. During the 42 weeks from 12/31/22 to 10/14/23, the claimant worked 40 hours or more for 1 week, using no sick time or vacation time. He worked 35 hours or more per week for 10 out of 42 weeks. He worked 25 hours per week or less 10 out of 42 weeks and used at least 40 hours of vacation time for 4 out of 42 weeks.

12. The claimant missed work due to illness and to provide childcare to his youngest child before the child went to their full-time childcare provider. He does not have a set parenting schedule with the mother of this child.

13. The warehouse manager spoke with the claimant two or three times about improving his attendance and about trying to meet piece count expectations. He

told the claimant his numbers were the worst of all the full-time selectors, even the new hires.

14. On or about 10/4/23, the warehouse manager told the claimant he had until the end of the month to improve his piece count and show that he could work full-time hours, or he would go to part-time status, which meant he would lose some benefits and his rate of pay would be $15.50 per hour. He would still be eligible for health insurance benefits.

15. The claimant did not provide the warehouse manager with a reason why he was not working the full 40 hours each week or why he was not meeting piece count expectations.

16. The claimant used vacation time from 10/9/23 to 10/13/23.

17. On 10/16/23, the claimant submitted a resignation letter to his supervisor. The resignation letter said if the warehouse manager was going to take away his benefits and reduce his pay from $24.45 per hour to $15.50 per hour, he cannot accept it, as he cannot pay his bills.

18. The claimant did not speak with any Human Resources employees about his 10/4/23 conversation with the warehouse manager or about his attendance or performance. He did not request to work the evening shift because he has another child he provides care to during those hours.

Credibility Assessment:

Both parties provided conflicting evidence regarding the events leading to the claimant's separation from employment. The evidence provided by the employer was more credible, as it was more detailed, consistent, and logical compared to the evidence provided by the claimant, and the employer provided documentation to supplement its testimony, including the number of hours the claimant worked per week from 12/31/22 until he separated from employment. In the claimant's 11/16/23 telephone fact-finding, he stated that he was told one or two weeks prior to the date he quit that he was going to part-time status. He also stated that he was told that by the end of the month, if he did not meet production expectations, he would be fired. He stated that he was later told he was going to part-time status. The employer witness, who is the warehouse manager, said he never told the claimant he was going to be fired; he told the claimant he had until the end of the month to improve his attendance and performance, or he would be put to part-time status. At the hearing, the claimant stated that he was not told he had until the end of the month to meet production expectations, he was only given until the end of the week. The claimant did not refute the warehouse manager's testimony about the claimant's attendance and conversations the warehouse manager had with the claimant about his attendance and work performance.

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 consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's original legal conclusion that the claimant is eligible for benefits.

Because the claimant resigned from his employment, this case is properly analyzed pursuant to the following provisions under 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 the above provisions, it is the claimant's burden to establish that he left his job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

Although the claimant testified that his childcare responsibilities and illness affected his attendance and performance, he did not contend that he left his employment for these or any other urgent, compelling and necessitous reason. Consolidated Findings ## 12 and 15. Therefore, we consider only whether the claimant established good cause attributable to the employer to leave his employment.

A substantial decline in an employee's 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). Here, on or about October 4, 2023, the employer notified the claimant that if he did not improve his production numbers and work his full-time schedule of 40 hours per week by the end of the month, his schedule would be changed to part-time, which would result in a partial loss of his benefits and a reduction in pay from $24.25 per hour to $15.50 per hour. Consolidated Findings ## 2, 7, and 14. The employer's proposed changes to the claimant's schedule and pay would constitute a 50 percent reduction to his hours and a 36 percent reduction to his hourly pay, in addition to the loss of benefits, such as paid vacation time. *See* Consolidated Finding # 2. Further, the combination of a reduced schedule and a reduction to the claimant's hourly pay would constitute a 68 percent reduction in wages (($24.25 x 40 hours) versus ($15.50 x 20 hours)).

We note that the claimant was regularly working less than his scheduled 40 hours per week due to personal circumstances prior to the employer's proposed changes, and, therefore, his wages were already reduced without any action taken by the employer. *See* Consolidated Findings ## 11–12.

However, the employer's proposed 68 percent reduction to the claimant's compensation, by itself, would constitute a substantial reduction to his wages, reducing the claimant's earnings beyond the reduction that he was already experiencing due to his personal circumstances.

Nonetheless, when the claimant abruptly resigned on October 16, 2023, his regularly scheduled hours and pay rate had not changed. *See* Consolidated Finding # 17. He could have continued working at his regular pay and hours beyond that date. It was still possible to improve his production numbers, and it also remained to be seen whether the warehouse manager would actually reduce his pay at the end of the month. In short, the claimant did not stay in the job long enough to show an actual, substantial reduction in pay. *See* Board of Review Decision 0022 5079 11 (Apr. 24, 2018) (claimant did not stay long enough to show that a staffing transfer had a detrimental effect on his hours or that the employer would actually reduce his pay at the end of the year). Thus, the claimant did not show that he had good cause attributable to the employer to leave his employment.

Even assuming *arguendo* that the claimant had good cause attributable to the employer to resign, 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).

The consolidated findings show that the claimant did not make any attempt to remedy the situation. The claimant was missing work due to illness and his childcare responsibilities. Consolidated Finding # 12. However, rather than speaking with his manager or the human resources department about the circumstances that were affecting his work hours and performance or notifying the human resources department about the manager's proposed changes to his schedule and pay, the claimant submitted his resignation on October 16, 2023. *See* Consolidated Findings ## 15 and 17–18. The claimant did not establish that speaking to his manager or the human resources department about his circumstances and exploring a potential accommodation without reducing his hourly pay would have been futile.

We, therefore, conclude as a matter of law that the claimant is not entitled to benefits under G.L. c. 151A, § 25(e)(1), because he voluntarily resigned from his employment without good cause attributable to the employer.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning October 15, 2023, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

Charlene A. Stawicki

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 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.

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.

SVL/rh