The claimant truck driver quit because he was dissatisfied with his shift start time, and because he knew a random drug test would be positive. Held the claimant failed to show that he resigned for good cause attributable to the employer, and he is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

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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 April 16, 2024. He re-opened an existing claim for unemployment benefits with the DUA, effective November 26, 2023, which was denied in a determination issued on June 1, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on July 11, 2024. We accepted the employer's application for review.

Benefits were denied 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 opportunity to testify and present other evidence. Only the employer 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 had good cause attributable to the employer to resign because the employer unilaterally changed his work schedule, 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 as a full-time truck driver for the employer, a supermarket, from March 7, 2024, through April 16, 2024, when he separated.

2. The claimant's direct supervisor was the shift supervisor (shift supervisor), who worked the same shift as the claimant. The shift supervisor and the claimant were also overseen by the transportation superintendent (transportation superintendent).

3. The transportation superintendent handled all scheduling and shift issues.

4. When the claimant was hired, the transportation superintendent told the claimant that he could be assigned to work shifts starting any time from 6:00 p.m. to 12:00 a.m., and that shifts did not have an assigned end time. The transportation superintendent told the claimant that the employer has six (6) different shift start times for drivers in the claimant's position.

5. The transportation superintendent told the claimant that the employer does not assign shifts a certain length of time.

6. The transportation superintendent told the claimant that the employer requires employees to work until the work on their assigned route is completed, which can range from eight (8) hours to fourteen (14) hours after the start time, and any hours that an employee works over eight (8) hours for one shift is overtime.

7. The transportation superintendent told the claimant that the employer does not limit the amount of overtime that employees can work, and most employees work fifty-five (55) to sixty-five (65) hours per week, which does include overtime pay.

8. The transportation superintendent told the claimant that the employer also offers employees the opportunity to work a sixth day per week, which would consist of all overtime hours.

9. The employer, including the transportation superintendent, never told the claimant that he could no longer work overtime hours.

10. Outside of when an employee is training, the employer allows drivers, such as the claimant, to change their assigned shift twice a year through a bidding process that occurs in the fall and the spring.

11. During the bidding process, all drivers are given the opportunity to select a different shift based on seniority, and all shifts are subject to change through the bidding process.

12. After the claimant was hired, the next opportunity he would have had to change his shift would have been in October 2024.

13. When the claimant began his employment, his first day of work occurred during the daytime hours and consisted of training with the transportation superintendent.

14. The claimant's training day occurred on March 7, 2024.

15. On the claimant's training day, the transportation superintendent told the claimant that he would train for two weeks with a trainer on the 8:00 p.m. start time shift and then after approximately two weeks of training, his assigned shift start time was the 11:00 p.m. shift going forward.

16. The employed [sic] assigned the claimant to train on the 8:00 p.m. start time shift because that was the only shift that the employer had a trainer available to train the claimant.

17. The claimant never told the transportation superintendent that he could not work the 11:00 p.m. start time shift.

18. The employer never assured the claimant that his shift start time would not change.

19. The claimant worked for multiple weeks on the 8:00 p.m. shift being trained by the trainer.

20. The claimant concluded his training hours with the trainer on March 30, 2024, on the 8:00 p.m. start time shift.

21. The claimant then took a few days off from work.

22. On April 4, 2024, the claimant began his regularly scheduled 11:00 p.m. shift, as was the employer's plan once the claimant completed his training. The claimant started and finished his shifts for the employer in [Town A], Massachusetts.

23. The claimant was displeased with the 11:00 p.m. start time shift.

24. The claimant wanted to finish work early to be able to drive to his twenty-eight-year-old daughter's house in [Town B], Massachusetts, to drive her to her medical residency training program at a local medical school. The residency program was part of his daughter's training as a doctor.

25. The claimant does not live with his daughter.

26. The claimant's daughter lived an hour and twenty minutes from the employer's work location.

27. When the claimant started his 11:00 p.m. shift start time, the claimant's shift would end eight (8) to fourteen (14) hours later, which would have an end time range from 7:00 a.m. to 1:00 p.m. the following day.

28. On April 8, 2024, the employer disciplined the claimant for failing to stop at a stop sign and failing to wear a seatbelt, based on the employer's video monitoring of their trucks.

29. The employer's driving requirements are governed by federal driving laws, which include random drug testing.

30. The employer utilizes a company to randomly select and test employees for drugs.

31. On April 11, 2024, the claimant's name was selected for the random testing and the claimant gave a drug test sample when requested.

32. On April 16, 2024, the claimant walked into the employer's workplace, told the dispatcher that he was quitting, handed the dispatcher a piece of paper that said, "I [claimant] This is not working for me and my family. I resign as of 4-16-24. Thank you for the opportunity" and walked out of the employer's workplace.

33. The claimant quit his job with the employer due to general job dissatisfaction and because the claimant knew that he was going to test positive for marijuana.

34. After the claimant resigned, the employer was informed that the claimant's drug test came back positive for marijuana, which would make the claimant ineligible to drive for the employer due to federal driving regulations for commercial drivers.

Credibility Assessment:

Although the claimant testified at the original hearing date that he quit due to the change in his work shift, after the remand hearing and consideration of all the testimony in this matter, this is not found to be credible. The employer's witness, who served as the claimant's direct trainer, provided direct and credible testimony that he told the claimant his assigned shift when he began work and he told the claimant that the 8:00 p.m. start time was just for the claimant's training period. The claimant never voiced any concerns to [the] transportation superintendent regarding the assigned shift time. As such, it cannot be concluded that the claimant's shift time ever changed. Furthermore, it is concluded that the claimant was only temporarily placed on the 8:00 p.m. start time shift for training purposes and that the claimant knew his assigned shift start time when he began his employment.

Regarding the claimant's allegations that the employer cut the claimant's overtime, this is not supported by the substantial and credible evidence in the record. The employer's witness provided direct and credible testimony that, for any shift that went over eight (8) hours, employees were automatically given overtime for the time over eight (8) hours. Additionally, the employer offered employees the opportunity to work an additional day of work, the pay for which would all be overtime. As such, the claimant's allegations that the employer cut his overtime is [sic] not found to be credible. Therefore, it is concluded that the employer never cut the claimant's overtime or told the claimant that he could no longer work overtime.

Although the claimant mentioned that he wanted to be able to drive to his daughter's residence to driver [sic] her to her medical school residency, this is not found to be a credible reason for the claimant quitting. The claimant's daughter is a twenty-eight-

year-old adult doctor, who was capable of arranging for her own transportation to her work commitment. Furthermore, the claimant knew his start time was going to be 11:00 p.m. and his shifts would last for 8 to 14 hours when he began working for the employer. Lastly, after the claimant began the 11:00 p.m. start time for his shift, he continued working for the employer for more than a week. As such, it cannot be concluded that the claimant was a necessary part of getting his adult daughter to her medical training program and that she was without any alternatives to getting transportation to her residency.

Given the totality of the testimony, and that it was concluded that the employer never changed the claimant's schedule, but, rather, had the claimant begin his assigned schedule that was disclosed to him at the time of hire, [sic] is concluded that the claimant did not quit due to a change in his work schedule. Additionally, given that it is concluded that the employer did not ever limit the claimant's ability to earn overtime and had work on an additional day available to the claimant, it is concluded that the claimant did not quit due to a cut in overtime hours. Given that claimant quit a few days after he submitted to a random drug test, and the claimant was displeased with his regularly assigned start time, it is concluded that the claimant quit due to job dissatisfaction and knowing that he would test positive on the drug test.

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, except the portion of Consolidated Finding # 4 that inaccurately describes the shift start times as between 6:00 p.m. and 12:00 a.m., instead of 6:30 p.m. and 12:30 a.m.[1] In adopting the remaining findings, we deem 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 disagree with the review examiner's legal conclusion that the claimant is eligible to receive benefits.

Because the claimant resigned from his employment, his eligibility for benefits is properly analyzed under the following provisions of G.L. c. 151A, §§ 25(e), which state, 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

[1] 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).

> 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 provisions places the burden of proof upon the claimant.

During the initial hearing, the claimant testified that he resigned because the employer had unilaterally changed his work schedule and limited his ability to work overtime hours. As the claimant resigned because of decisions purportedly made by his employer, we need not consider whether he resigned for urgent, compelling, and necessitous reasons.

When a claimant contends that his 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). Therefore, we consider whether the employer created good cause for the claimant to resign.

In her original hearing decision, the review examiner credited the claimant's testimony and found that the employer had, without notice, changed the claimant's work hours indefinitely. After remand, however, the review examiner's consolidated findings are markedly different, finding that the claimant quit because he was dissatisfied with the 11:00 p.m. start time of his shift and knew that a random drug test would come back with positive results. *See* Consolidated Findings ## 23 and 33. These findings are based upon the detailed credibility assessment rendered by the review examiner. 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). " Based upon the record before us, we conclude that the review examiner's assessment is reasonable in relation to the record and should not be disturbed on appeal.

Nothing in these consolidated findings shows the employer unilaterally changed the claimant's work hours, limited his ability to work overtime hours, or otherwise adversely impacted the terms and conditions of his employment.

With respect to the start time of his post-training shift, the employer had made the claimant aware when hired that his shift start time could fall anywhere between 6:30 p.m. and 12:30 a.m., and that the employer does not assign shifts that end at any specific time. *See* Consolidated Findings ## 4 and 5. The claimant never told the transportation supervisor, who handles all scheduling and shift issues, that he could not work the 11:00 p.m. shift. *See* Consolidated Findings ## 3 and 17. Moreover, as the review examiner noted in her credibility assessment, the claimant worked this shift for over a week before he submitted his resignation. *See* Consolidated Findings ## 22 and 32.

Although the claimant also alleged that the employer limited his ability to work overtime hours, several consolidated findings now undercut this contention. After remand, the review examiner accepted the employer's testimony that he, the transportation superintendent, told the claimant that employees typically work more than eight hours a shift, and any additional hours worked automatically result in overtime pay. *See* Consolidated Finding # 6. The review examiner also

found that the transportation superintendent told the claimant that the employer does not limit the amount of overtime that employees can work, and the employer offers opportunities to work a sixth day per week, which would consist of all overtime pay. *See* Consolidated Findings ## 7 and 8. The review examiner further found that the transportation superintendent never told the claimant that he could no longer work overtime hours. *See* Consolidated Finding # 9.

The record also contains information to suggest that the claimant was displeased with the disciplinary action he received on April 8, 2024, since this occurred only a few days before his resignation on April 16, 2024. *See* Consolidated Findings ## 28 and 32. The employer disciplined the claimant for failing to stop at a stop sign and failing to wear a seatbelt, based on the employer's video monitoring of their trucks. *See* Consolidated Finding # 28. This was not unreasonable criticism of the claimant's job performance. A claimant does not have good cause attributable to an employer to quit a job simply because he disagrees with a reasonable reprimand. *See* Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 730-732 (1986).

Based exclusively on the employer's testimony, the review examiner found that the claimant also quit because he knew that he was going to test positive for marijuana. *See* Consolidated Finding # 33. The employer testified that, for the company, a positive test result from a federally mandated random drug test meant that, if the claimant remained working for the employer, he would have lost his commercial driver's license, which he needed to perform the duties of a commercial truck driver, and would been disqualified from driving until he met reinstatement requirements determined through a third party.[2] *See* Consolidated Findings ## 29 and 34. Although the underlying federal rules are not in the record, nothing in the record causes us to question whether the employer followed state and federal guidelines and protocols in subjecting the claimant truck driver to the random drug test.

Based exclusively on the employer's testimony, the review examiner found that the claimant also quit because he knew that he was going to test positive for marijuana. Consolidated Finding #33. The employer testified that, for the company, a positive test result from a federally mandated random drug test meant that, if the claimant remained working for the employer, he would have lost his commercial driver's license, which he needed to perform the duties of a commercial truck driver, and would been disqualified from driving until he met reinstatement requirements determined through a third party.[3] *See* Consolidated Findings ## 29 and 34. This record lacks sufficient information for us to meaningfully consider this matter. However, we note there is no basis in the record to question whether the employer followed state and federal guidelines and protocols in subjecting the claimant to the random drug test.

Because the findings do not reflect any unreasonable behavior on the part of the employer, the claimant has not shown good cause attributable to the employer to resign on April 16, 2024, and we agree with the review examiner that the claimant resigned merely because he was dissatisfied with his job. *See* Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979) (general and subjective dissatisfaction with working conditions does not provide good cause to leave employment under G.L. c. 151A, § 25(e)(1)).

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

We, therefore, conclude as a matter of law that the review examiner's decision to award benefits is not free from error of law, because the claimant did not show that he separated for good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning April 14, 2024, 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 26, 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

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.

JMO/jv