**Although the claimant delivery driver asserted that he resigned because his workload prevented him from taking scheduled breaks, the record establishes that the employer did not discourage him from taking breaks and, despite the workload, the claimant continued to ask for more work. Held the claimant failed to show that he quit for good cause attributable to the employer or urgent, compelling, and necessitous reasons. Nor did he take reasonable steps to preserve his employment prior to leaving. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review**
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**Issue ID: 334-FHJ7-7NMN**

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 affirm.

The claimant resigned from his position with the employer on January 29, 2025. He filed a claim for unemployment benefits with the DUA, effective January 19, 2025, which was approved in a determination issued on March 29, 2025. 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 April 25, 2025. 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). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to afford the claimant an opportunity to testify. 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's absence from the hearing precluded him from showing he resigned his position for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons, 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 delivery driver for the employer, a delivery service provider for an online retail site, from 8/19/24 through 1/29/25.

2. When the claimant was hired, he told the supervisor that he wanted to work in a place that was free from drama.

3. The claimant worked from 11:30 a.m. to 10:00 p.m., four days per week.

4. Employees are all scheduled for 10 hours of work time.

5. Delivery time varies, based on how much time employees need to drive to begin their deliveries.

6. Employees are scheduled for a 30-minute, unpaid break.

7. Employees also had two 15-minute paid breaks.

8. The claimant's timecard reflected that he took his breaks during each shift.

9. The employer posted reminders for employees to ensure they took their breaks.

10. Some days the claimant took breaks, some days he did not take breaks.

11. The employer does not make the claimant's schedule.

12. All employees' schedules are determined by the online retail site, depending on customer demand.

13. A normal day for delivery drivers includes about 120-130 stops.

14. Sometimes, after the claimant completed 130 deliveries, he offered to help with additional deliveries.

15. Sometimes, employees are assigned many more stops (160-190), depending on the workflow.

16. In early January 2025, the claimant was clocking out after 10:00 p.m.

17. The supervisor noticed the late punches and addressed the matter with the claimant, so that he would not be overworked.

18. On 1/13/25, the claimant's supervisor messaged the claimant the following: "Please make sure you are completing your routes and able to make it back to the station punched out at 10:00 p.m."

19. The claimant replied that he was worried about his timecard not getting approved for the prior week and had concerns about his paycheck for that week.

20. The supervisor responded that he would double-check his hours. He reiterated that he needed to be back to [sic] the station by 10:00 p.m. that day.

21. At 8:58 a.m., he [claimant] replied, "Okay I can do that." Then he wrote, "I can try but it is almost impossible to do that without a break and the phone says I am owed two 15's and a 30."

22. The supervisor then indicated, "the route is doable by 8:30 p.m., with taking your breaks."

23. When routes are projected to end at 8:30 p.m., the employer gives employees until 10:00 p.m. to finish their days.

24. The following day when they spoke in person, the supervisor told the claimant that he did not want to argue with him about the matter, and that he wanted him to return by 10:00 p.m.

25. The claimant indicated he would make his best effort to do so and confirmed he wanted to continue to help with additional deliveries.

26. The claimant was scheduled for more deliveries and on different routes, to account for the additional deliveries.

27. On 1/26/25 at 8:53 p.m., the claimant texted the employer, indicating that he wanted more work.

28. On 1/29/25, at 4:15 p.m., while he was working, he texted the employer:

    Hey, I just want to let you know that I am thinking I am going to quit today. I was complaining about a week or a few weeks ago, about coming home later than 10 p.m. while being promised still a forty-hour week when hired. Since then, I have been retaliated against with double the stops I usually get. I'm 32 years old. I just don't have time for childish games and drama. Thank you for the opportunity but I am going to explore other avenues. I have a wife and a kid to take care of, and I just don't have time for drama and childish stuff like that. I went from one week having 130 stops the most to 160 to 139. The algorithm wouldn't change like that in a week. I know dispatchers can change routes after they've been produced by [online retailer]. Your dispatcher already said that. I just wanted to do my job without being messed with. I shouldn't be punished for taking a break that is granted to me by the state. And [online retailer] said I get two 15's and I shouldn't be punished for that either.

29. At 5:01 p.m., while he was out making deliveries during his shift, the claimant texted the employer that he should not have been punished for taking a break that they had granted him. He said he talked to a counselor and that they told him it was "not cool" that they were retaliating against him for taking his breaks.

He indicated that he would let the employer know when the van was back in the yard, and when he clocked out. He also wrote that he would let his counselor know when he clocked out so they would all be on the same page.

30. He further texted the employer, indicating that he arrived at the yard at 5:00 p.m., and that he wanted to let them know that he didn't take lunch and he also had let his legal counselor know and that he was not putting it in the [online time system] that he took a break. He further wrote: "Thank you and have a good year."

31. The claimant had spoken to a labor law counselor about the matter previously.

32. At 5:03 p.m., the employer messaged the claimant, asking where he left the van and the key.

33. The claimant replied, "At our meet location."

34. The employer replied, "Copy."

35. The employer felt that the claimant was a good employee.

36. The employer had previously given the claimant a raise in pay because he was such a good employee.

37. The claimant's job was not in jeopardy at the time of his resignation.

38. The claimant generally liked his job.

39. The claimant may have stayed at the job if the employer explained more thoroughly how his deliveries should be made while taking his breaks, but he never asked the employer to do this while he was employed.

40. Prior to his resignation, the claimant did not speak with the human resources manager about any issues with his employment.

41. Prior to his resignation, the claimant never told his supervisor that he was not taking breaks.

42. The claimant quit his job because he felt the employer was creating drama by assigning him more deliveries/different routes after he was spoken to about needing to return to the facility after the end of his scheduled shifts in January 2025.

Credibility Assessment:

The claimant did not establish that he quit his job involuntarily for urgent, compelling and necessitous reasons. The claimant testified that he quit his job

because he felt the employer was creating drama by assigning him more deliveries/different routes in January 2025. However, the evidence revealed that the claimant had asked for additional work multiple times that month and that the employer was not specifically in charge of designing the claimant's routes. The claimant did not establish that he resigned voluntarily with good cause attributable to the employer. The employer witness testimony was more credible than the claimant's testimony. His answers were consistent and logical. For instance, the claimant maintained throughout the hearing that it was too difficult for him to complete his schedule of deliveries in January 2025, after his supervisor required him to return to the employer's facility by 9:00 p.m. The employer witness testified that he instructed him to return to the facility by 10:00 p.m., which was the time his shift was scheduled to end each day. The employer witness' testimony was supported by the messages read into the record. The claimant later admitted he was incorrect. The claimant was otherwise often evasive in the hearing.

The claimant did not establish that he attempted to preserve his job prior to resigning. Prior to quitting, he did not speak with his supervisor about his specific concerns or to request a breakdown of how his deliveries were to fit in with his shift hours with his scheduled break times. This is unreasonable considering his supervisor considered him a good employee and had given him a raise in the past for doing his job well. And because [sic] the claimant liked his job and had specifically requested to help with additional work just days prior.

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, with the exception of the portions that state that the claimant did not establish that he quit his job involuntarily for urgent, compelling and necessitous reasons, for good cause attributable to the employer, or that he attempted to preserve his job prior to quitting. These are legal conclusions, which at this stage in the proceedings are for the Board of Review to decide. Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463-464 (1979) ("Application of law to fact has long been a matter entrusted to the informed judgment of the board of review."). For the reasons explained below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant resigned from his employment, his separation 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 satisfaction of the commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary. We, therefore, conclude as a matter of law that . . .

The express language of these provisions places the burden of proof upon the claimant.

During the remand hearing, the claimant testified that he resigned because his workload prevented him from taking scheduled breaks, and the employer had recently assigned him even more deliveries on different routes, which effectively did not allow him to take these breaks. *See* Consolidated Findings ## 26, 28, and 42. 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 the original hearing decision, the review examiner determined that the claimant did not establish that the employer had subjected him to unduly harsh working conditions, noting that the claimant had even offered to do more work for the employer. *See* Remand Exhibit 1.[1] After remand, the review examiner still found that the claimant had offered to help with additional deliveries until his separation in January, 2025. Consolidated Findings ##14 and 25. The review examiner also found that the claimant resigned because he felt the employer was "creating drama" by assigning him more deliveries and different routes, and that, even though he never asked for this information while he was employed, he may have continued working for the employer if the employer had explained how deliveries should be made while taking his breaks. Consolidated Findings ## 39 and 42. 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, the review examiner's assessment is reasonable in relation to the record and should not be disturbed on appeal.

The consolidated findings do not show that the employer unreasonably altered the claimant's workload, prevented the claimant from taking scheduled breaks, or otherwise adversely impacted the terms and conditions of his employment.

It is undisputed that the employer did not make the claimant's schedule, and that driver schedules were determined by the online retail site, as they were based on customer demand. *See* Consolidated Findings ## 5 and 11–12. It is also undisputed that, on January 13, 2025, approximately two weeks before the claimant resigned, he mentioned to the supervisor that

[1] Remand Exhibit 1 is the hearing decision, dated April 25, 2025.

returning to the station by 10:00 p.m. would be "almost impossible" to do, and that the "phone says I am owed two 15's and a 30." Consolidated Finding # 21. In response, the supervisor told the claimant that "the route is doable by 8:30 p.m., with taking your breaks." Consolidated Finding # 22. It is further undisputed that the employer gives employees additional time to complete their shifts, as they have until 10:00 p.m. to do so. *See* Consolidated Finding # 23.

Nothing in these facts indicates that the employer acted unreasonably towards the claimant at any time. The supervisor's text message response demonstrates that the employer had assigned the route and expected timeframe for completion with the claimant's scheduled breaks in mind. Consolidated Finding # 9 also indicates that the employer posted reminders for employees, including the claimant, to ensure they took their breaks. With respect to the claimant, specifically, Consolidated Finding # 17 states that the supervisor noticed the claimant's late punches and addressed the matter with him, so that he would not be overworked.

Even though the claimant's timecard reflected that he took his breaks during each shift, the review examiner found that, on some days, the claimant took breaks, and on other days, the claimant did not take breaks. *See* Consolidated Findings ## 8 and 10. However, these findings do not fully encapsulate the extent of the claimant's testimony. When the review examiner asked the claimant: "How many days did you not take a 30-minute break?" the claimant answered, in pertinent part: "So, for the most part, it depends, if I feel overwhelmed, and feel that I'm not going to finish in time, I won't take the break, if it's a huge route, I won't take the break, if it's a route that I can manage, then I will take the break, it depends on the hours, … if I have 180 stops, I'm probably not going to take a break. … I can't give you an exact date. …"[2] Nothing in the claimant's answer suggests that the employer discouraged him from taking breaks. Rather, based on this testimony, it appears that it was the claimant, not the employer, who decided when he would continue to work instead of taking his scheduled breaks. We take note of the fact that, although the claimant alleged that his workload, particularly over the course of his final two weeks of employment, prevented him from taking breaks, he could not articulate how many times he felt compelled to forego them.

The claimant also testified that, during his final two weeks of employment, he became increasingly troubled by the fact that the employer had assigned him more deliveries on different routes. As noted earlier, the claimant believed that these additional deliveries would not allow him to take his scheduled breaks. However, nothing in these consolidated findings show that the employer subjected the claimant to an unreasonable workload, or that the employer retaliated against him for discussing breaks with his supervisor on January 13, 2025. The claimant did not establish that he was treated differently from similarly situated employees. Consolidated Finding # 13 indicates that a normal day for delivery drivers includes 120–130 stops, while Consolidated Finding # 15 states that, sometimes, employees are assigned many more stops (160–190), depending on the workflow. There is nothing in the record, including the claimant's testimony, to suggest that he was ever required to make more than 180 deliveries in a single shift. *See* Consolidated Findings # 28.

[2] While not explicitly incorporated into the review examiner's findings, the claimant's testimony is part of the unchallenged evidence introduced at the hearing and placed in 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).

Moreover, it is undisputed that, sometimes, after completing 130 deliveries, the claimant offered to help with additional deliveries. Consolidated Finding # 14. In January, 2025, the claimant confirmed that he wanted to continue to help with additional deliveries. Consolidated Finding # 25. As recently as January 26, 2025, only three days prior to his resignation, the claimant texted the employer, indicating that he wanted more work. *See* Consolidated Finding # 26. This request for even more work undercuts the claimant's contention that his delivery workload had become unduly burdensome.

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 January 29, 2025, and we believe the claimant resigned merely because he had become 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)).

Even if the events identified by the claimant did create good cause attributable to the employer for him to leave, he must also show that he made a reasonable attempt to preserve his employment, or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984).

The findings reflect that the claimant never asked the employer to explain how to manage his delivery load while taking breaks, did not speak with the human resources manager about any issues with his employment, and never told his supervisor that he was not taking breaks. Consolidated Findings ## 28 and 39–41. Although the claimant offered his perspective in a text message to the employer on January 29, 2025, he was already in the process of notifying the employer that he was resigning. *See* Consolidated Finding # 28. During the remand hearing, the claimant made much of the fact that he waited one hour for the employer to respond before returning the van to the employer's station. However, we do not believe that one hour is enough time for the employer to respond to the claimant's concerns. Therefore, the claimant did not show that he took reasonable steps to preserve his employment prior to resigning or otherwise believed such efforts would have been futile.

We, therefore, conclude as a matter of law that the claimant resigned without meeting his burden to demonstrate that it was for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances as meant under G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending January 25, 2025, 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 - July 25, 2025**

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/rh