

**Because the claimant was not paid for travel time from the employer's shop to his work sites, held the claimant had good cause attributable to the employer to resign and is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review**  
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**Issue ID: 352-MNJ3-7RFP**

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 June 23, 2025. He reopened an existing claim for unemployment benefits with the DUA, which was effective January 26, 2025. In a determination issued on July 22, 2025, the DUA denied benefits beginning June 22, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant,<sup>1</sup> the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 19, 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). 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 was not eligible for benefits because he had not shown that the employer engaged in an action that caused him to quit, 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 worked full-time for the instant employer, [sic] landscaping contractor as a lighting installer from May 19, 2025, to June 20, 2025. The claimant's pay was \$28.00 per hour.

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<sup>1</sup> The claimant's former employer was invited to participate in the hearing as a witness only but did not attend.

2. Upon hire, the claimant was told he would be training for the first month and he would meet with the owner at the end of the month for a review.
3. For the first few weeks, the claimant shadowed the senior lighting installer. The claimant met him in the mornings at the shop, and the claimant drove with his coworker to a work site in a company vehicle, driven by the coworker, and then returned to the shop when their scheduled jobs were completed.
4. The claimant's workday hours varied depending upon the time needed to complete the jobs scheduled for each day.
5. After receiving his first paycheck, the claimant was unhappy about not receiving overtime pay for days he worked over eight hours in one day.
6. For the week of June 9, 2025, to June 13, 2025, the claimant's work site was located over an hour from the shop. The claimant spoke with his coworker about being compensated for the two hours spent on the commute. The coworker told the claimant that as a driver, the coworker gets paid for the commute. The claimant did not remember reading about travel time pay in the handbook.
7. On June 20, 2025, the claimant received his second paycheck and was again upset that he did not receive the pay he was expecting. The claimant was not paid for the travel time to and from the work site for the week of June 13, 2025. The claimant requested to meet with the human resource representative and his manager to discuss the pay issues.
8. On Monday, June 23, 2025, the claimant met with human resources and his manager. The claimant's manager explained that the company pays employees from the time they begin at their work site to the time they end at the work site, and that there is no guarantee of forty hours per week, an employee is paid for the hours that they work. Travel time for passengers is paid with a daily stipend of \$25.00, if the work site is a considerable distance from the shop. If the employee is driving the work vehicle, the employee is paid their hourly rate while driving. The human resource representative suggested that the claimant could become a driver in the future to be paid for his time to and from the work sites, and the manager commented that may be a possibility, but that the number of trucks was low and he did not have any additional vehicles available at that time.
9. On June 23, 2025, the claimant informed his manager and the human resource representative that he was resigning his position effective immediately because he believed that he would be paid at least forty hours per week.
10. Work was available to the claimant on the day he resigned.

## 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 # 6 insofar as it states that the claimant's coworker told the claimant that he (the coworker) was paid for travel time to work sites as a driver. This is not supported by the record.<sup>2</sup> Finding of Fact # 9 is incomplete, as the record shows the claimant did not resign solely because he believed he would be paid at least forty hours a week. In his testimony and in his responses to a fact-finding questionnaire, the claimant stated that he also resigned because he did not receive his regular hourly pay for travel time during the workday. *See Exhibit 1.*<sup>3</sup> In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is not entitled to benefits.

Because the claimant resigned from his employment, we analyze his eligibility for benefits 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.

These provisions expressly provide that the claimant bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances.

When considering whether a 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). The claimant asserts that he quit his job, in part, because the employer did not pay him for travel time.

The Department of Labor Standards regulation at 454 CMR 27.04(4)(c), provides as follows:

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<sup>2</sup> The claimant testified that, when he asked his coworker how the employer could afford to pay for so much travel time, the coworker replied that the clients are rich and spend big money. This portion of the claimant's testimony, as well as the portions referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

<sup>3</sup> Exhibit 1, which includes the claimant's responses to a fact-finding questionnaire, is also part of the unchallenged evidence introduced at the hearing and placed into the record.

If an employer requires an employee to report to a location other than the work site or to report to a specified location to take transportation, compensable work time begins at the reporting time and includes subsequent travel to and from the work site.

The claimant would report to the employer's shop in the morning, where he met a coworker who was training him. The coworker would then drive the claimant to their assigned work sites and drive him back to the employer's shop at the end of the workday. *See* Findings of Fact ## 2-3. During the week ending June 13, 2025, the drives to and from the work site were over an hour each way. *See* Finding of Fact # 6.

Under the provisions of 454 CMR 27.04(4)(c), the claimant's compensable work time began when he reported to the employer's shop, as he was required to do to meet his coworker, and included subsequent travel to and from the work site. However, the employer did not pay the claimant for his travel time to and from the work site during the week ending June 13, 2025. *See* Finding of Fact # 7. Thus, the employer violated the regulation and created good cause attributable to the employer for the claimant to resign.

However, our analysis does not end 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).

In this case, the claimant asked to meet with his manager and human resources about his issues with his pay. *See* Finding of Fact # 7. When they met, the manager and human resources representative did not offer to compensate the claimant at his regular hourly rate for his travel time. Rather, they explained the company policy under which only employees who drive company vehicles are paid for travel time. Passengers are only given a \$25-a-day stipend if the travel distance is "considerable." Furthermore, there were no company vehicles available at that time, so the claimant could not become a driver. *See* Finding of Fact # 8. Given the response that he received, the claimant could reasonably conclude that further attempts to be compensated for travel time at his regular hourly rate would have been futile.

We, therefore, conclude as a matter of law that the claimant resigned from his employment 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 entitled to receive benefits for the week beginning June 22, 2025, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.  
Member



**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 23, 2025**

Michael J. Albano  
Member

**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](http://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.

REB/rh