

The claimant left his job as he was unable to renew his bus driving license due to pending criminal charges that were ultimately *nolle prosequi'd*, and there is no indication in the record the claimant was at fault in the incident that led to the filing of the charges against him. Because he was out of work through no fault of his own, he is eligible for benefits.

**Board of Review
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Issue ID: 0018 4272 05

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Marielle Abou-Mitri, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. Benefits were denied on the ground that the claimant voluntarily left employment without good cause attributable to the employer, pursuant to G.L. c. 151A, § 25(e)(1).

The claimant had filed a claim for unemployment benefits, which was approved in a determination issued by the agency on April 12, 2016. The employer appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner reversed the agency's initial determination in a decision rendered on July 2, 2016. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On April 28, 2017, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's conclusion that the claimant voluntarily left employment without good cause attributable to the employer is supported by substantial and credible evidence and is free from error of law, where the consolidated findings show that the criminal charges preventing the claimant from renewing his school bus license certificate were ultimately withdrawn.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we reverse the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant worked as a school bus driver for the employer, a school bus transportation company, from July 1, 2014 through March 4, 2016.
2. The claimant's direct supervisor was the Supervisor.
3. The claimant is required to have a 7D school bus license certificate in order to complete his job duties. The claimant cannot drive a school bus without the 7D school bus license certificate.
4. The Supervisor checks all employees' 7D certificates monthly to ensure they have the proper certifications. The employer can be subject to a state fine if a driver is driving without the 7D certificate.
5. The claimant was required to renew his 7D certificate annually with the Registry of Motor Vehicles. The claimant's 7D certificate was due to expire on March 4, 2016.
6. On December 24, 2015, an altercation took place at the claimant's home between the claimant and his girlfriend's sons. The claimant was arrested and subsequently charged.
7. The criminal charges against the claimant remained pending in court.
8. In February of 2016, the claimant began the process of renewing his 7D certificate.
9. On February 11, 2016, the claimant received a denial of his 7D certificate due to the pending criminal charges on his record.
10. The claimant called the Supervisor and notified her that he was unable to renew his 7D certificate due to a pending criminal matter. The claimant explained that he was in a physical altercation with his girlfriend's children during the Christmas holiday and that there was a pending trial regarding the matter.
11. The claimant quit his employment effective immediately on March 4, 2016 due to his inability to renew his 7D certificate.
12. The Supervisor told the claimant to notify her if he was able to resolve the matter and renew his 7D certificate.
13. On April 18, 2017, all charges against the claimant were dropped. The case was not prosecuted any further due to lack of cooperation by witnesses in the

case. An order of “Nolle Prosequi” was entered at the Boston Municipal Court.

14. In May of 2017, the claimant renewed his 7D certificate. The claimant’s 7D certificate is valid until May 24, 2018.
15. After renewing the 7D certificate, the claimant contacted the Supervisor to inquire about available work. The Supervisor told the claimant that it was almost summer vacation and there was no work available.

CREDIBILITY ASSESSMENT:

The claimant did not attend the first hearing to provide any evidence or testimony regarding the specific reason he was unable to renew his 7D license certificate. However, the claimant attended the remand hearing and provided detailed, direct and consistent testimony regarding the pending criminal matter, which resulted in his inability to renew his 7D license. The claimant provided documentary evidence to establish that the charges were dropped and the case was dismissed. The employer did not attend the remand hearing to refute the claimant’s testimony. As such, the claimant’s direct and credible testimony was hereby accepted by this Review Examiner.

Ruling of the Board

In accordance with our statutory obligation, we review 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 original 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. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant is ineligible for benefits.

The review examiner originally decided this case under 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

After the original hearing, which the claimant did not attend, the review examiner decided to deny benefits after concluding that the claimant voluntarily left his job, as he caused a statutory impediment to continued employment.

In March of 2016, the claimant was unable to renew his 7D certificate because he had pending criminal charges against him stemming from an altercation with his girlfriend’s children. The

claimant needed this certificate to perform his job duties. It is evident that he quit because he knew he would be discharged if he did not have a valid license to drive a bus.

The Supreme Judicial Court has held that, if employees leave employment under the reasonable belief that they are about to be fired, their leaving cannot fairly be regarded as voluntary, within the meaning of G.L. c. 151A, § 25(e)(1). Malone-Campagna v. Dir. of Division of Employment Security, 391 Mass. 399, 401–402 (1984), *citing* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597-598 (1981). In such an involuntary separation, we must consider whether the claimant should be disqualified under G.L. c. 151A, § 25(e)(2), which provides, in relevant 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

In order to be disqualified under G.L. c 151A, § 25(e)(2), the claimant must have engaged in misconduct, which caused his separation. After remand, the review examiner found that the criminal charges against the claimant were ultimately withdrawn on April 18, 2017. There is no indication in the record that the claimant was at fault in the altercation that led to the filing of criminal charges against him. In light of these facts, we conclude that the claimant's separation did not result from wrongdoing on his part.

This is not a case where the claimant “voluntarily” left his job because he “brought his unemployment on himself.” *Compare* Olmeda v. Dir. of the Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion) (court upheld the denial of unemployment benefits to a claimant who was unable to work, because his driver's license was suspended for a year following a conviction for driving while intoxicated). Here, the claimant was not convicted; the charges were dropped.

The purpose of the unemployment statute is to provide temporary relief to “persons who are out of work and unable to secure work through no fault of their own.” Cusack v. Dir. of Division of Employment Security, 376 Mass. 96, 98 (1978) (citations omitted). Seeing nothing in the record to suggest that the claimant was responsible for his loss of license, we conclude as a matter of law that the claimant's separation is not disqualifying, under G.L. c. 151A, §§ 25(e)(1) or (2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending March 12, 2016, and for subsequent weeks, if otherwise eligible. Benefits shall not be charged to the employer's account, but shall be charged to the solvency account pursuant to G.L. c. 151A, § 14(d).

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 22, 2017



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Judith M. Neumann, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL 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