

Board of Review
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Issue ID: 0019 7353 94

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by John Cronin, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits following his separation from employment on August 23, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On October 13, 2016, the agency, applying G.L. c. 151A, § 25(e)(2), initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearing. In a decision rendered on February 17, 2017, the review examiner reversed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer and, thus, was disqualified, under G.L. c. 151A, § 25(e)(1). The Board accepts the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record. We also conclude that the review examiner's application of G.L. c. 151A, § 25(e)(1), is free from any error of law. In this case, the employer requested that the claimant provide the employer a letter from the sober house that the claimant was residing in to show that the claimant had passed his routinely administered drug tests. If the claimant submitted the letter, the employer may have allowed the claimant to continue his employment. This was reasonable to do, given the claimant's prior history of drug use, the employer's familiarity with the way the claimant behaved and looked on a daily basis, the owner's feeling that the claimant did not "look right" on August 23, 2016, and the failed drug test administered by the owner. Since the claimant did not provide the requested document, the review examiner was reasonable in concluding that the claimant brought his unemployment upon himself. *See Olmeda v. Dir. of Division of Employment Security*, 394 Mass. 1002 (1985); *Scannevin v. Dir. of Division of Employment Security*, 396 Mass. 1010, 1010–1011 (1986).

Since the review examiner found that the owner had told the claimant "to leave his house and to not return to work," unless he brought the letter from the sober house with him, this situation could also reasonably be viewed as a discharge. Even if this were viewed as a discharge, and the provisions of G.L. c. 151A, § 25(e)(2), were applied, we believe that the result would still be a disqualification. Again, under the circumstances, the employer reasonably conditioned the

claimant's continued employment upon receiving a letter from the sober house confirming the claimant's passing ongoing drug testing there. The claimant did not comply with this condition, and there are no findings or evidence that something prevented the claimant from obtaining such a letter. On the contrary, as the review examiner noted in Part III of the decision, the claimant was capable of obtaining a letter, as he did so on or about September 10, 2016. Given the employer's reasonable expectation that the claimant supply evidence to back up his claim that he was passing his drug tests at the sober house, which the owner expressly told the claimant on August 23, the claimant's failure to comply with the expectation, and the lack of any mitigation, the separation would also be disqualifying under G.L. c. 151A, § 25(e)(2).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning August 21, 2016, 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 – April 6, 2017



Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, 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.

SF/rh