

**Board of Review
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Issue ID: 0020 5345 45

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Eric M. P. Walsh, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits following his separation from employment on December 5, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On January 18, 2017, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on April 8, 2017, the review examiner affirmed the agency determination, concluding that the claimant voluntarily left employment without either good cause attributable to the employer, or urgent, compelling, and necessitous reasons and, thus, was disqualified, under G.L. c. 151A, § 25(e)(1). The Board accepted 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 decision to deny benefits is based on substantial evidence, and we affirm it, although under different reasoning, as explained below. The difference in the review examiner's reasoning does not affect the claimant's substantial rights, as he remains ineligible for benefits.

In his conclusion, the review examiner stated that the claimant did not establish he left employment for an urgent, compelling, and necessitous reason, as he failed to provide medical documentation explicitly advising the claimant to quit his job in order to preserve his health. We disagree with this reasoning. The claimant provided medical documentation indicating that he was in fact experiencing stress and anxiety related to his employment. An explicit recommendation from a medical professional that the claimant quit his job would be probative but is not necessary. In order to qualify for benefits, the claimant merely has to show that he reasonably believes his work environment is causing or exacerbating his stress and anxiety. *See Carney Hospital v. Dir. of Division of Employment Security*, 382 Mass. 691 (1981) (rescript opinion) (leaving work under a reasonable belief that her skin infection was caused by her work environment was sufficient to support a conclusion that the claimant's separation was involuntary, under G.L. c. 151A, § 25(e)(1)).

However, when determining whether a claimant left work for compelling and necessitous reasons, we must look at whether or not his separation was caused by forces beyond his control. See Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765-766 (2009). At issue here is the claimant's work environment, particularly the discipline meted out to the claimant over the course of his employment and the effect of the discipline on the claimant's mental health. The evidence shows that the employer's disciplinary response to the claimant's actions was causing stress and anxiety to the claimant, as he apparently disliked being held accountable for behavior that was contrary to the employer's expectations. The evidence further shows that much of the discipline the claimant received, in particular in his final months of employment, was due to his attendance infractions, a circumstance well within the claimant's control. We note there is nothing in the record indicating that the discipline the claimant received was either unreasonable or imposed in a bullying and harassing manner. Rather, the totality of the evidence before us, establishes that the reasonable discipline imposed on the claimant and the resulting stress he experienced, arose from the claimant's own actions. Consequently, it was within the claimant's control whether he brought upon himself the discipline he received and the stress and anxiety, which resulted from this discipline. It appears that the claimant himself could have put an end to his stress and anxiety by modifying his work related conduct.¹ Thus, in light of the totality of the record before us, we cannot conclude that circumstances of a compelling and uncontrollable nature forced the claimant to resign from his employment. *See id.* We further note, since the findings and record show that the reprimands given to the claimant were reasonable, that the claimant has also failed to establish that he left work for good cause attributable to the employer, as meant under G.L. c. 151A, § 25(e)(1).

¹ We further note that the record before us does not indicate that the discipline imposed on the claimant and the resulting stress arose from a fundamental inability on the claimant's part to meet the employer's reasonable work performance expectations. *Compare* Board of Review Decision 0017 4854 67 (claimant was ultimately unable to successfully perform her duties, this fundamental inability combined with an underlying medical condition created urgent and compelling circumstances, which led to her separation.) Board of Review Decision 0017 4854 67 is an unpublished decision available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is affirmed.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 25, 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