

Claimant acted diligently in seeking work authorization renewal from the USCIS. When it did not come through in time, it was for reasons beyond his control. His separation is deemed to be involuntary due to urgent, compelling, and necessitous circumstances.

**Board of Review
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Issue ID: 0021 8150 72

BOARD OF REVIEW DECISION

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 was discharged from his position with the employer on May 5, 2017. He re-opened a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 8, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 1, 2017. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having good cause attributable to the employer or urgent, compelling, and necessitous reasons, and, thus, he 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion, that the claimant brought about his own unemployment because he failed to renew his work authorization document, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact and credibility assessments are set forth below in their entirety:

1. The claimant is a citizen of Algeria who has been residing in the United States since 1994.

2. Initially, the claimant had issues with his legal presence in the United States but in 2004, the claimant obtained a Work Authorization Card allowing him to legally work in the United States during the dates that the Card [sic] unexpired.
3. The Work Authorization Card must be renewed by the claimant each year.
4. In April of 2016, the claimant had difficulty obtaining his Work Authorization Card documentation and the employer told the claimant to begin the renewal process well in advance for 2017 because they would not hold his job open for long periods again if he failed to maintain valid Work Authorization Card documentation.
5. The employer later reminded the claimant to take steps to keep his Work Authorization Card current and valid.
6. In December of 2016, the claimant submitted an application for his Work Authorization Card renewal.
7. The claimant worked full-time as a Waiter for this employer's hotel from 01/18/04 until 04/26/17 when the claimant's Work Authorization Card expired and he could no longer work for this employer.
8. The employer told the claimant that they would hold his position open until 05/05/17, but on 05/05/17, the claimant still had no valid Work Authorization Card to present to the employer and the separation was processed as a voluntary quit.
9. On 05/04/17, the claimant had submitted a request to The Department of Homeland Security U.S. Citizenship and Immigration Services to expedite his Work Authorization Card application.
10. On 05/19/17, the claimant's Work Authorization Card was renewed effective 05/19/17 through 05/18/18. The claimant did not notify the employer that he had obtained a new valid Work Authorization Card.
11. The claimant filed to reopen his unemployment claim effective 05/14/17 on a claim he had filed new on 01/03/17 (effective 01/01/17).
12. The claimant requested a hearing on the initial 06/08/17 determination that he was not eligible for benefits because he had voluntarily left this employment by failing to maintain a valid Work Authorization Card.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Where a claimant's separation results from the claimant's failure to maintain or obtain a license or other statutory prerequisite for employment, the separation is deemed to be a quit rather than a discharge. Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion). The claimant's qualification for benefits is, therefore, governed by 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.

The express terms of this section of law assign the burden to the claimant to show that he is eligible for benefits.

In order to show good cause attributable to the employer, the focus is on the employer's conduct. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). The record shows that the employer ended the claimant's employment due to not having a valid work authorization document. Because the employer was not legally permitted to employ the claimant without one, it acted reasonably in ending the employment relationship. Since the employer's action was reasonable under the circumstances, there is no basis for concluding that the claimant's separation was for good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

The real question is whether the claimant separated involuntarily for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e). A "wide variety of personal circumstances" have been recognized as constituting "urgent, compelling and necessitous" reasons. Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), *quoting* Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 847 (1992). Here, the claimant's separation was compelled by an expired work authorization document. We consider whether the loss of the necessary credential was a result of circumstances beyond his control or, instead, was the result of the claimant's own conduct.

The record shows that the claimant applied for renewal of his work authorization card with the U.S. Citizenship and Immigration Services (USCIS) four months before it was to expire. Finding of Fact # 6. Although not in the findings, the record shows that in an effort to obtain the necessary work authorization, the claimant's daughter, a U.S. citizen, also filed a separate immigrant visa petition on the claimant's behalf, and the claimant filed an application to adjust

his status to a lawful permanent resident so that he could obtain a green card.¹ Finally, the claimant's attorney filed a request with USCIS to expedite his work authorization application. Finding of Fact # 9; *see also* Exhibit # 15. All of these demonstrate diligent efforts to renew the claimant's work authorization.

In Board of Review Decision 0015 5236 84 (Nov. 5, 2015), we held that a claimant, who conscientiously attempted to maintain her work authorization but was thwarted by delays at the USCIS that were beyond her control, had shown that she was out of work due to urgent, compelling, and necessitous reasons.² The claimant's circumstances in the present case are very similar. It is evident that the claimant could not control how the USCIS handled his two petitions, and there is no indication that he did anything, or neglected to do something, to slow down the process.

We, therefore, conclude as a matter of law that the claimant's separation from the employer was involuntary and due to urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

¹ The claimant testified that it was his understanding from speaking with his attorney that the USCIS will not deal with two cases at once, so they denied his original work authorization renewal application, but continued to process the lawful permanent resident application. This testimony, which is supported by a letter from the claimant's attorney, Exhibit # 15, 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).

² Board of Review Decision 0015 5236 84 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 29, 2017, and for subsequent weeks if otherwise eligible. The charges from the employer's account shall be handled consistently with G.L. c. 151A, § 14(d)(3).³



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 22, 2017



Charlene A. Stawicki, Esq.
Member

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.

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³ G.L. c. 151A, § 14(d)(3), provides that benefits shall not be charged to an employer's account, but to the solvency account, in any case where a claimant is not disqualified due to leaving work involuntarily under G.L. c. 151A, § 25(e)(1).