

**When claimant's temporary assignment ended, the claimant immediately contacted the employer, but when the employer wanted to explore a new assignment, the claimant stated that she could not work because she was traveling to Puerto Rico. Neither the employer's nor the client company's actions amounted to good cause attributable to the employer to stop working. There is insufficient evidence to show urgent, compelling, and necessitous circumstances that required the Puerto Rico trip.**

**Board of Review  
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**Issue ID: 0021 8581 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 affirm.

The claimant separated from her position with the employer on May 5, 2017. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on August 5, 2017. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 28, 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, she 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 remanded the case to the review examiner to make further subsidiary findings from the record about conversations between the claimant and the employer at the time of her separation. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's original conclusion that the claimant was disqualified under G.L. c. 151A, § 25(e)(1), because, after a temporary work assignment ended, she declined work from the employer so that she could collect unemployment benefits is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

1. The claimant worked for the employer on a full-time, temporary to permanent assignment from 12/3/2014 until her last physical day of employment on 5/5/2017.
2. The claimant was aware that she must contact the employer upon completion of an assignment to request an additional assignment before filing for unemployment benefits.
3. The claimant was in the process of being hired directly by the client company whom she was working for, however, she was let go from the assignment on 5/5/2017 after failing a background check due to an incident 7 years ago.
4. On 5/5/2017, the client company informed the claimant that she was not needed any longer and to contact the employer.
5. The claimant immediately called the employer informing the Account Manager that she lost her assignment because of a background check and that she needed to go to court again because of an old case.
6. The Account Manager informed the claimant to come to the office to see what they could offer her for assignments.
7. The claimant went to the employer's location and the claimant told the Account Manager that she could not work because she did not have a car and was traveling to Puerto Rico with her husband.
8. The Account Manager informed the claimant to let her know when she returned and that she would place her back on an assignment.
9. On 5/10/2017, the claimant filed her claim for unemployment benefits.
10. A couple weeks later, the claimant went to the employer's location and spoke with the Account Manager.
11. The Account Manager asked the claimant if she could work and the claimant told the Account Manager that she was ill and needed to undergo doctor exams.
12. The claimant stated that she would follow up after receiving the medical attention.
13. The claimant told the Account Manager that she was going [sic] collect unemployment due to being let go by the client company.
14. The claimant never reported back to the employer again.

## 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. Although Consolidated Finding # 7 states that, upon losing her assignment with the client company, the claimant told the Account Manager that she could not work because she did not have a car and was traveling to Puerto Rico, the record indicates that the claimant's car problems happened sometime after this conversation. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits, but for a different reason.

The claimant's assignment with the client company ended involuntarily when the client company found something in a background check. *See* Consolidated Finding # 3. Nonetheless, the review examiner analyzed the claimant's separation from the employer as a voluntary quit. We agree. The record shows that when the client company assignment ended, the employer invited her to come to the office to explore a new assignment, but the claimant informed the employer's account manager that she could not work because she was traveling to Puerto Rico. *See* Consolidated Findings ## 6 and 7. Essentially, the claimant communicated to the employer that she did not want to continue working for the employer in a new work assignment. The review examiner, therefore, correctly analyzed the claimant's eligibility for unemployment benefits 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 . . . [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 the above provision place the burden of proof upon the claimant. In determining whether the 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).

In this case, there is no indication that the employer, a temporary staffing agency, caused the claimant to lose her assignment with the client company. Even if we attribute the client company's actions in ending her assignment to the employer, Consolidated Finding # 3 shows that the decision was triggered by what we assume was a background check into the claimant's criminal history record. During the hearing, the employer testified that the claimant's assignment was at Ft. Devens. The claimant testified that the client had a policy that it could not

employ anyone with a record.<sup>1</sup> From this limited information and considering the location of the assignment, we cannot say that such a policy is unreasonable or that the decision to terminate the assignment was unreasonable. Therefore, the claimant has not shown that her employment ended for good cause attributable to the employer.

Moreover, the record shows that the employer did not want to end the claimant's employment. It was about to find a new assignment for the claimant, but did not have a chance to, because the claimant said that she could not work. *See Consolidated Findings ## 5–7*. We consider whether the reason she could not work constituted urgent, compelling, and necessitous circumstances under the statute.

“[A] ‘wide variety of personal circumstances’ have been recognized as constituting ‘urgent, compelling and necessitous’ reasons under” G.L. c. 151A, § 25(e), “which may render involuntary a claimant’s departure from work.” 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 reason was that the claimant was going to Puerto Rico. *See Consolidated Finding # 7*. Because there is nothing to suggest that she had to go to Puerto Rico due to a family emergency or other circumstances over which she had not control, we assume that she simply had made travel plans to visit the area. These facts do not establish urgent, compelling, or necessitous reasons to stop working for the employer.

The conversation in which the claimant told the employer that she could not work because she was going to Puerto Rico appears to have taken place between her last physical day of work on May 5, 2017, and before she filed her claim on May 10, 2017. *See Consolidated Findings ## 4–9*. The only legal question we must decide is whether the claimant’s loss of employment at that time was for reasons that are disqualifying under G.L. c. 151A, § 25(e). Consolidated Findings ## 10–14, which took place after the claimant opened her claim, are not relevant to our decision.

Finally, we note that, because the evidence shows that the claimant contacted her temporary staffing agency employer immediately upon being terminated from her assignment, which put the employer on notice that it could offer her additional work, we see no reason to disqualify the claimant under a separate provision of G.L. c. 151A, § 25(e), which is particular to temporary help firm employees. *See Board of Review Decision 0016 0869 84* (Mar. 24, 2016).

We, therefore, conclude as a matter of law that the claimant is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

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<sup>1</sup> This testimony, while not explicitly incorporated into the review examiner’s findings, 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).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning May 7, 2017, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 19, 2018**



Paul T. Fitzgerald, Esq.  
Chairman



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](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.

AB/rh