

**Where a claimant needed to be out of work due to an injury, and his employer required that he and his doctor fill out non-FMLA paperwork to stay on a leave of absence, the claimant brought about his own unemployment when he did not keep in contact with the employer after his doctor refused to complete the paperwork.**

**Board of Review  
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**Issue ID: 0022 1362 71**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by Peter Sliker, 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 his position with the employer on November 23, 2016. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 15, 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 August 29, 2017.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, 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 accepted the claimant's application for review and afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant 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 is subject to disqualification under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the employer required the claimant to complete documentation to remain on a leave of absence, the claimant's doctor refused to fill out the documentation, and the claimant did not report back to the employer that the doctor would not complete the necessary paperwork.

### **Findings of Fact**

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

1. The claimant worked as an assistant manager for the employer, a pharmacy store company. The claimant began work for the employer in July, 2011.
2. In early 2016, the claimant used all of his FMLA time.
3. On August 13, 2016, the claimant tore his calf muscle at work when he fell off of a ladder.
4. On September 8, 2016, the employer approved the claimant for non-FMLA medical leave from August 14, 2016, through September 22, 2016, and September 23, 2016, through October 22, 2016, based on the recommendations of his physician.
5. The claimant requested that his leave be extended to October 31, 2016. On September 23, 2016, the employer's Benefits Service Center mailed the claimant a letter requesting that he complete a Non-FMLA MLOA Provider Packet by October 8, 2016. The Packet includes 7 pages of medical questions for his physician. (Exhibit 5, pp 74–81)
6. On September 30, 2016, the claimant faxed a note from his physician to the employer stating "Patient may continue to be out of work until next appointment on October 28, 2016." He also faxed the 7<sup>th</sup> page of the Provider Packet which included a completed "Authorization to Release Medical Information." He did not send pages 1 through 6 of the packet.
7. On October 7, 2016, the employer mailed the claimant a letter informing him the documentation he submitted was "incomplete or insufficient." The letter included a new packet.
8. On October 14, 2016, the claimant spoke with a representative from the employer's Benefits Service Center. He told her that he was not seeing his physician until October 28, 2016. She agreed to extend the deadline for the submission of his Non-FMLA Provider Packet until November 1, 2016.
9. On October 28, 2016, the claimant saw his physician. The claimant told his physician that he needed the packet completed. He told her that his job was in jeopardy. The physician told him the prior note from her should suffice. She told him the employer's request for the packet was just a way to get him to go back to work that week. The claimant did not send the packet to the employer.
10. On November 3, 2016, the Benefits Service Center mailed the claimant a letter informing him that if they did not hear from him on or before November 18, 2016 his employment would be terminated effective November 22, 2016.
11. The store manager attempted to reach the claimant but was unsuccessful.

12. The claimant did not communicate with the Benefits Service Center.
13. On November 23, 2016, the employer discharged the claimant effective November 22, 2016.
14. The claimant applied and was approved for disability payments from the employer's workers' compensation carrier.

### 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, except for Finding of Fact # 11, which is not supported by a reasonable view of the record. The remaining findings, however, are supported by substantial and credible evidence. As discussed more fully below, we conclude that, because the claimant did not remain in communication with the employer regarding his inability to obtain the necessary documentation to remain out of work, he brought about his own unemployment and is subject to disqualification.

As an initial matter, the Board must decide what section of law governs the claimant's separation. The review examiner found that the claimant was discharged on November 23, 2016. Based on the other findings made by the examiner, it appears that the employer severed the employment relationship, because the claimant failed to provide the Non-FMLA Medical Leave of Absence Provider Packet (the Provider Packet) to the employer by November 1, 2016. Although the employer ultimately took the step to end the claimant's employment, the employer took the action, because the claimant had not returned to work, he had not provided the employer with the Provider Packet, and he had not contacted the employer after the employer sent out the November 3, 2016 letter. "An employee who anticipates a legitimate absence from work must take reasonable steps to preserve his employment." Scannevin v. Dir. of Division of Employment Security, 396 Mass. 1010, 1011 (1986). If the employee fails to properly notify the employer of the reason for the absence, a resulting termination is equivalent to a voluntary resignation. Id. Here, based on the lack of communication from the claimant and his absence from work, we conclude that the claimant initiated his separation from his job. Therefore, we conclude that the review examiner was correct to apply G.L. c. 151A, § 25(e)(1).

G.L. c. 151A, § 25(e)(1), 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 . . . .

Under this section of law, the claimant has the burden to show that he is eligible to receive unemployment benefits. The review examiner concluded that the claimant did not carry his

burden, because he “failed to complete the [P]rovider [P]acket,” and, thus, did not make sufficient efforts to preserve his employment.

The record contains medical evidence to show that the claimant needed to be out of work. Indeed, the review examiner found that the claimant was injured at work on August 13, 2016, and the claimant was approved to take a leave of absence from August 14, 2016, through October 22, 2016. Later, the claimant requested that the leave be extended to October 31, 2016. In response to this, the employer requested that the claimant complete the Provider Packet. The claimant returned some documentation to the employer, but not a completed Provider Packet. *See Findings of Fact ## 6 and 7.* The employer notified the claimant that it needed a complete Provider Packet, and it allowed the claimant until November 1, 2016, to submit the proper and completed documentation. When the claimant saw his doctor on October 28, 2016, the doctor refused to complete the Provider Packet. *See Finding of Fact #9.*

We recognize that the claimant made an effort to complete the Provider Packet. It was not his fault that his doctor would not complete it for him. However, after he met with the doctor, it was then incumbent upon him to notify the employer that he was unable to complete the Provider Packet through no fault of his own. Rather than communicate with the employer, the claimant did not send the Provider Packet back to the employer and did not respond to the November 3, 2016, letter from the employer.<sup>1</sup> He did not communicate at all. *Finding of Fact #12.*

Communicating with the employer about his inability to obtain a completed Provider Packet was a reasonable step the claimant could have taken to keep his job. Nothing in the findings suggests that the employer was aware that the claimant could not obtain a completed Provider Packet. If the employer knew this, it may have reached out to the doctor itself or made an exception to its usual non-FMLA leave of absence policy. Moreover, requiring the claimant to submit the Provider Packet was not an unreasonable expectation on the part of the employer. In order to administer the leave of absence and ensure that it has all the information it needs to cover its own internal policies and procedures, it is reasonable for the employer to require that the claimant’s medical issues be documented in one place, rather than in piecemeal documents submitted separately.<sup>2</sup>

The claimant maintained during the hearing, and currently maintains on appeal, that the employer had all the information it needed to approve him to be out past October 22, 2016. He asserted that the employer had sufficient information, that nothing had changed from the previously submitted documentation, and the employer had his authorization to contact his doctor if it needed more information. Even if this is all true, it was not unreasonable for the employer to request that the claimant submit one completed document with adequate medical information contained therein.<sup>3</sup>

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<sup>1</sup> In his appeal to the Board, the claimant asserts that he told the review examiner that he did not receive the November 3, 2016, letter. His testimony during the hearing was both that he did not recall receiving the letter and that he “did at some point see a letter.”

<sup>2</sup> In this case, it was all the more reasonable for the employer to request accurate medical documentation and forms, where the claimant was injured on the job and a workers’ compensation claim was in the making. *See Finding of Fact # 14.*

<sup>3</sup> The record and claimant’s appeal contain doctor’s notes stating that the claimant should be out of work beyond October 22, 2016. *See Exhibit # 4, pp. 9 and 10.* However, there is no completed Provider Packet.

Although the claimant was not at fault for failing to complete the Provider Packet, he was at fault for failing to communicate with the employer after November 1, 2016, the deadline for submitting the Provider Packet. By failing to maintain this communication, the claimant brought his unemployment upon himself.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and free from error of law, where the claimant failed to maintain communication with the employer regarding his need to be on a leave of absence, thus abandoning his job.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning November 22, 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 - November 22, 2017**



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.

SF/rh