

The claimant reasonably believed that his working conditions were exacerbating his high blood pressure, but failed to establish that he took reasonable steps to preserve his employment, or that such efforts would have been futile.

**Board of Review
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Issue ID: 0024 3118 89

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 resigned from his position with the employer on January 5, 2018. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 2, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on June 16, 2018. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined 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). 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 obtain additional testimony and other evidence pertaining to the claimant's health. Both parties attended the remand hearing. Thereafter, the review examiner issued her 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 decision, which concluded that claimant voluntarily left employment without either good cause attributable to the employer, or urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant did not bring his concerns to the human resources department prior to quitting.

Findings of Fact

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

1. The claimant worked full-time as a service technician for the employer, a propane and oil marketer, from September 1999 until January 5, 2018, when he quit work.
2. The claimant worked a set schedule of hours Monday through Friday from 8:00am to 4:30pm. He was paid \$27.50 per hour.
3. The claimant worked on [Location A].
4. The employer has another location in New Hampshire.
5. The employer's installation work on [Location A] slightly slows down during the winter months.
6. When the claimant was hired, he was assigned to fix boilers and water heaters and install propane tanks underground. Propane tanks are installed into February.
7. A crane and a service truck were needed to install a propane tank. When the claimant worked alone he had to drive the crane to the property and then return to the workplace to get the service truck.
8. The claimant's immediate supervisor was the Operations Supervisor/Salesman, the claimant's brother. When he was hired approximately five years ago, the claimant's workload increased because he was a good salesman and generated business.
9. The Operations Supervisor ran the office, sold the product and assisted the claimant in the field.
10. During the warmer months, another employee helped the claimant in the field.
11. During the colder months, the other employee drove the delivery truck for the employer.
12. In the winter months, the claimant installed temporary heat for contractors.
13. During the winter the claimant quit work, the employer received 12-14 frozen regulator services calls in the middle of the night. It took approximately 4 hours to complete the call.
14. Twice in 2017, the Operations Supervisor suggested the claimant find another job to avoid suffering a heart attack or a stroke from work. The claimant told

- his supervisor he needed help. His supervisor doesn't hire employees and told the claimant he forwarded the request onto the District Manager.
15. Sometime prior to Christmas 2017, the Operations Supervisor was out of work for three weeks due to a shoulder injury.
 16. Just prior to Christmas, 2017, the Operations Supervisor had foot surgery.
 17. Before he had the surgery, the claimant asked the District Manager for help with his work when his brother wasn't able to help him due to the foot surgery.
 18. The District Manager did not provide the claimant with help due to a lack of employees.
 19. While the Operations Supervisor was out for medical reasons, the claimant performed some of his duties including answering service calls, making sure all the trucks left the yard for work and some paperwork.
 20. Prior to the claimant leaving work, the Operations Supervisor returned to work to perform office work, but he could not assist in the claimant in the field for a couple of months for medical reasons.
 21. Sometimes the claimant was assigned to drive the delivery truck.
 22. When the claimant's brother began employment, he required technicians to file their gas permits for jobs. Previously, another employee performed the duty.
 23. The employer implemented a new inventory parts system. The claimant had to count his parts on the truck and warehouse each day and order parts, if needed.
 24. An employee in Franklin, MA was supposed to send the claimant inventory every two weeks, but he didn't unless the claimant called him.
 25. The employer's safety officer gave the technicians a Standard Operating Procedure. The procedure instructed the technicians to perform several safety checks after installing a tank, including checking every connector on the tank for gas leaks, obtaining the model and serial number of all appliances in the home and performing a flow test of the pressure of the gas line. The entire process could take up to 1.5 hours.
 26. The claimant and other technicians did not perform all the safety checks in accordance with the Standard Operating Procedure because it would only permit time to perform 2 jobs in a day. The claimant was usually assigned 4 to

- 5 jobs in a day. They “fudged” the paperwork to reflect the safety checks were performed.
27. The claimant completed as much work as he could each day without a helper.
 28. The claimant was not required to work overtime.
 29. The claimant was never reprimanded for his work performance.
 30. The claimant was diagnosed with high blood pressure six years ago. The claimant was prescribed one medication to treat his condition.
 31. The claimant’s blood pressure increased when his workload and duties increased beginning in 2016.
 32. Three years ago, the claimant’s physician prescribed the claimant a second medication to treat his high blood pressure and then increased it again to three medication two years ago.
 33. Sometime around 2016, the claimant had a temporary medical card to drive the work truck due to high blood pressure.
 34. In 2017, a physician provided the claimant with a high dosage of medication to control his blood pressure.
 35. On September 28, 2016, the claimant’s blood pressure was 124/72. On December 20, 2016, the claimant’s blood pressure was 138/72. On June 20, 2017, the claimant’s blood pressure was 128/62. On March 29, 2018, the claimant’s blood pressure was 112/67. On April 7, 2018, the claimant’s blood pressure was 112/68. On April 14, 2018, the claimant’s blood pressure was 114/67. On April 22, 2018, the claimant’s blood pressure was 112/66. On May 5, 2018, the claimant’s blood pressure was 114/67. On May 12, 2018, the claimant’s blood pressure was 120/82. On May 20, 2018, the claimant’s blood pressure was 120/80. On May 26, 2018, the claimant’s blood pressure was 119/80. On July 13, 2018, the claimant’s blood pressure was 120/80.
 36. The claimant smoked cigarettes until he had knee surgery in 2017.
 37. The claimant was on a leave of absence for eight weeks when he had knee surgery.
 38. On April 29, 2018, the claimant discontinued the prescription medication Amlodipine, but continued to take his two other medications. The claimant’s blood pressure has remained within normal limits since the discontinuation of the one prescription.

39. The claimant had difficulty sleeping because he had thoughts about work for the following day.
40. The claimant reported to work on January 5, 2018. The Operations Supervisor handed the claimant his list of work for the day.
41. The claimant objected to the amount of work on his list that day without help from another employee.
42. The claimant quit work due to stress from his workload.
43. The claimant did not make any complaints to the employer's human resource department about stress or high blood pressure because he made his complaints directly to his supervisor.
44. The human resource department would have referred the claimant to its stress reduction program.

[Credibility Assessment:]

The employer's witness, the Vice President of Human Resource and Risk Management, testified that the employer's service installation work decreased in the winter months. The claimant testified that the employer's service installation business in New Hampshire may decrease due to the cold weather up North, but on [Location A] the reduction is slight. The claimant testified [that] underground propane tanks are installed into February. Service technicians install temporary heat for contractors. Additionally, the winter the claimant quit work there was a rash of service calls for frozen regulators in the middle of the night, which took a few hours to complete. Because the claimant was able to provide specific duties that he performed in the winter months and the employer's witness testified that he didn't know what the claimant's workload consisted of or if he took on additional responsibilities for his supervisor, this examiner deems the claimant's testimony about the workload is more reliable than the employer's testimony.

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. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

Because the claimant resigned from employment, this case is properly analyzed under G.L. c. 151A, § 25(e), 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.

Under these statutory provisions, the claimant has the burden to show that he is eligible to receive unemployment benefits. Following the initial hearing, the review examiner concluded that the claimant had not carried his burden. After our review of the record, and the new consolidated findings of fact, we reach the same conclusion.

In the original findings of fact, the review examiner stated that although the claimant's workload and duties increased for a period of time leading up to his separation, the claimant was not required to work overtime to complete his work and was never reprimanded for his work performance. Given these findings, it was concluded that the claimant did not establish he had a valid complaint against the employer, and, therefore, he did not have good cause attributable to the employer to resign from his position. These findings remained intact after we remanded this case for additional evidence to obtain the information necessary for us to determine whether the claimant had an urgent, compelling and necessitous reason to leave his employment, and whether he took reasonable steps to preserve his employment prior to quitting on January 5, 2018.

After remand, the review examiner found that the claimant's blood pressure increased when his workload and duties were increased beginning in 2016. She also found that his blood pressure medication was increased a few times between 2016 and the time the claimant left his employment. Finally, the review examiner made specific findings showing the claimant's different blood pressure readings between September 2016 and May 2018, and these findings reflect a downward trend in the numbers, even after the claimant was taken off one of his medications. While findings do not establish with one hundred percent certainty that the claimant's working conditions exacerbated his high blood pressure, we have enough evidence to conclude that the claimant reasonably believed this was the case, which is all that is needed under the unemployment statute to establish that one has an urgent, compelling, and necessitous reason to leave employment. *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, in addition to establishing such a reason to quit, a claimant must also show that, prior to quitting, he took reasonable steps to preserve his employment or that such an attempt would have been futile. *Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93–94 (1984). During the remand hearing, the claimant testified that he only told his supervisor that his working conditions were exacerbated his high blood pressure.¹ Though he asked the District

¹ While not explicitly incorporated into the review examiner's findings, this testimony 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).

Manager for help, there is no indication that the claimant communicated the health concerns during that request. As such, the claimant has failed to establish that escalating his health concerns to either the District Manager or the human resources department would have been futile.²

We, therefore, conclude as a matter of law that, because the claimant did not take reasonable steps to preserve his employment, he is disqualified pursuant to G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending January 6, 2018, 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 – October 30, 2018



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. declines to sign the majority opinion.

**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

² We note that, at the remand hearing, the claimant stated during cross-examination that he did not bring his concerns to the human resources department, because the district manager had previously told employees to use the chain of command. The claimant did not explain why he interpreted this advice to mean he could not go to human resources once he realized that his supervisor was not addressing his concerns.