

Claimant is denied benefits under G.L. c. 151A, § 25(e)(1) for failing to provide his employer with a valid, unexpired Green Card or proof that he had requested a replacement card, as requested by the employer.

**Board of Review
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Issue ID: 0024 3279 66

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award 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 January 3, 2018. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 6, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on March 30, 2018. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest, or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner for further testimony and evidence regarding the claimant's failure to produce his Permanent Resident Card (Green Card). Only the employer 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 the claimant did not engage in intentional misconduct conduct for failing to provide his Green Card, is supported by substantial and credible evidence and is free from error of law, where, following remand, the record establishes that the claimant failed to timely provide the employer with a receipt showing that he had applied for a replacement Green Card.

Findings of Fact

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

1. On December 14, 2002, the U.S. Department of Justice Immigration and Naturalization Service granted the claimant Legal Permanent Residency in the United States and issued him a "Permanent Resident Card" (Green Card) with an expiration date of December 24, 2012.
2. On an unknown date, prior to the December 24, 2012 expiration date, the claimant renewed and was issued a new Green Card that expired around December 2020.
3. The claimant previously worked for the employer, a retail store, during an unknown period of time.
4. The employer rehired the claimant in January 2017 and [he] worked as a claims associate for the employer until January 3, 2018, when he was discharged.
5. At the time the claimant was rehired, he was not required to provide his Green Card because the employer had it in their record from his previous employment period.
6. On an unknown date in 2017, the claimant lost his Green Card. He did not request a replacement Green Card at the time because he did not intend to leave the country and did not believe he needed it for another reason at the time.
7. On an unknown date in November 2017, the PC received notification from the employer's human resources department that the claimant's Green Card was not valid. The PC told the claimant to produce his Green Card to show the expiration date and the claimant told him he lost it.
8. On an unknown date, the PC told the claimant to apply for a replacement Green Card, provide the employer with the receipt that he had applied for his replacement Green Card and he would indicate in the employer's system that a replacement Green Card had been applied for.
9. Shortly after the claimant spoke with the PC, he contacted the United States Customs and Immigration Services (USCIS) and requested a new Green Card. USCIS scheduled the claimant an appointment to its Boston office in February 2018.
10. On unknown dates in December 2017, the PC asked the claimant if he had his Green Card. Each time, the claimant told the PC he did not have his Green Card.
11. The claimant did not provide the employer with the appointment notice from the USCIS for an unknown reason.

12. On January 2, 2018, the claimant arrived to work, was called into the PC's office and was told if he failed to provide his Green Card by January 3, 2018, he would be terminated.
13. On January 3, 2018, the PC terminated the claimant for failing to provide a valid Green Card.
14. In March 2018, the claimant's Green Card that expired on December 24, 2012, was extended until March, 2019.

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. We set aside Finding of Fact # 2 which states that, prior to December 24, 2012, the expiration date of his Green Card, the claimant renewed his Green Card and was issued a new one, which would expire around December, 2020. That finding is based solely on the claimant's testimony, which is unsupported by any documentary evidence, and moreover is inconsistent with Finding of Fact # 14, which states that the claimant's Green Card, which expired on December 24, 2012, was extended until March, 2019. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we conclude, based on the new consolidated findings of fact, that the claimant should be disqualified from receiving unemployment benefits, as the claimant brought about his own loss of employment.

The review examiner awarded benefits after analyzing the claimant's separation under G.L. c. 151A, § 25(e)(2), which provides, in relevant 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest

We disagree with the review examiner's initial conclusion that the claimant was discharged from his employment. In our view, the claimant's separation, which occurred when the claimant failed to provide the employer with the requested proof that he had applied for a replacement Green Card, was brought about by the claimant's own conduct. Therefore, it was a voluntary separation as a matter of law. As such, it is controlled 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.

In analyzing the scope and applicability of G.L. c. 151A, § 25(e)(1). The Supreme Judicial Court has stated the following:

The language of G.L. c. 151A, § 25, and our cases interpreting that language, demonstrate that the word “voluntarily,” as used in § 25(e)(1), is a term of art that must be read in light of the statutory purpose of ‘provid[ing] compensation for those who ‘are thrown out of work through no fault of their own.’ . . . Thus, for example, in Rivard v. Dir. of Division of Employment Security, . . . we concluded that ‘a person who causes the statutory impediment that bars his employment leaves his employment ‘voluntarily’ within the meaning of § 25(e)(1) when the employer realizes the impediment and terminates the employment.’ As Rivard demonstrates, in determining whether an employee left work ‘voluntarily’ for purposes of § 25(e)(1), the inquiry is not whether the employee would have preferred to work rather than become unemployed, . . . but whether the employee brought his unemployment on himself. (Citations omitted.) Thus, we look to the findings and record before us to determine whether the claimant brought his unemployment upon himself.

Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion).

Following remand, the consolidated findings of fact establish that the claimant failed to provide the employer with a valid, unexpired Green Card. The claimant had received a Green Card from the U.S. Department of Immigration and Naturalization Service on December 14, 2002, which expired on December 24, 2012. The Department of Labor regulations require that, in order to be eligible for unemployment insurance, a claimant who is not a U.S. citizen must be legally authorized to work in the United States. *See* 20 C.F.R. § 604.5.

In November, 2017, the employer was informed that the claimant’s Green Card was not valid. When asked by the employer to produce his Green Card so that the employer could see the expiration date, the claimant responded that he had lost it. The employer told the claimant to apply for a replacement Green Card and to give the employer the receipt indicating that it had been applied for. Shortly after that, the claimant contacted the U.S. Department of Immigration and Naturalization Services and requested a new Green Card and was given an appointment in February, 2018, at the Boston office of the U.S. Immigration and Naturalization Services. The facts indicate that the employer attempted to work with the claimant and, in lieu of timely providing his Green Card that the claimant said he had lost, was willing to accept proof that the claimant had requested a replacement card. The claimant did not participate in the remand hearing. Thus, we are unaware of any reason for the claimant’s failure to provide the employer with the requested confirmation that he had applied for the replacement card, or that he had made an appointment with the U.S. Department of Immigration and Naturalization Services. As a result of the claimant’s failure to produce confirmation that he had requested the replacement card, he was discharged on January 3, 2018. Thus, the record before us establishes that the

claimant brought about his own unemployment by failing to timely produce the application receipt requested by the employer.

We, therefore, conclude as a matter of law that the claimant left work voluntarily, without good cause attributable to the employer, or urgent, compelling, and necessitous reasons, and is subject to disqualification pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending December 31, 2017, 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 - July 30, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SPE/rh