

Due to his substance abuse problem, claimant was abruptly and involuntarily committed to a treatment facility and, therefore, failed to appear for work. Held he separated due to urgent, compelling, and necessitous reasons.

**Board of Review
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Issue ID: 0027 2835 41

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 the claimant benefits following his separation from employment on August 21, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On November 7, 2018, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and both parties attended the hearing. In a decision rendered on December 12, 2018, the review examiner overturned the agency determination, concluding that the claimant was discharged from his employment, and that he did not engage in deliberate misconduct in wilful disregard of the employer's interests or knowingly violate a reasonable and uniformly enforced rule or policy of the employer. Thus, she concluded that the claimant was not disqualified under G.L. c. 151A, § 25(e)(2). The Board accepts the employer's application for review.

Findings of Fact:

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

1. The claimant worked full time as a 2nd Climber for the employer, a utility/vegetation company, from 04/20/15 until 08/21/18. The claimant's rate of pay was \$17 per hour.
2. The existence of any applicable written policy was not established.
3. The employer expects employees to notify them if they are unable to report to work.
4. On 08/20/18, the claimant's probation officer instructed him to appear in court the following morning because his family was attempting to have him involuntarily committed to a substance abuse facility under M.G.L. Chapter 123, Section 35.

5. On 08/21/18, the claimant appeared in court and was mandated to a substance abuse facility in a local municipal jail for a minimum of thirty days.
6. Before leaving court, the claimant asked his mother to contact his employer to let them know the situation. The claimant's mother agreed to do so.
7. The claimant did not want to lose his job.
8. For two days, the claimant was unable to use the telephone.
9. On 08/23/18, the claimant called his mother and asked if she contacted his employer; the claimant's mother told him she spoke to his supervisor and told the claimant: "You're all set."
10. On 09/28/18, the claimant was released from the program and he contacted the General Foreman Supervisor (GFS) about returning to work. The GFS told the claimant he was no longer employed due to multiple no call/ no shows.
11. The claimant told the GFS his mother had contacted the employer on his behalf.
12. The claimant felt as if arguing with the GFS about whether his mother had called the employer was "a lost cause."
13. On 10/03/18, the claimant filed a claim for unemployment benefits with an effective date of 09/30/18.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's decision to award benefits to the claimant is based on substantial evidence. However, we note that the review examiner applied an incorrect provision of law with respect to the cause of the claimant's separation. This error does not affect the claimant's substantial rights, as he remains eligible for benefits.

The review examiner concluded that the claimant did not quit his employment and analyzed his separation as a discharge under G.L. c. 151A, § 25(e)(2). However, the review examiner found that the claimant did not return to work because he was involuntarily committed to a substance abuse facility. The review examiner also found that the claimant did not have access to a telephone during his first two days in the substance abuse facility, so he relied on his mother's assurance that she would contact his employer regarding his circumstances. There is, however, no evidence in the record that the claimant's mother contacted the employer. Ultimately, the employer terminated the claimant's employment, as they understood he had abandoned his job

after several days of being a no-call, no-show. In light of these findings, which support a conclusion that the claimant left his employment when he was committed to a substance abuse facility, the claimant's separation from the employer must be analyzed under a different provision of G.L. c. 151A, § 25(e), which states, 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.

“[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). Medical conditions are recognized as one such reason. *See* Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335–336 (1979). Here, the claimant established that, due to his substance abuse problem, he was abruptly and involuntarily committed to a treatment facility. We are satisfied that this constituted an urgent, compelling, and necessitous reason to depart from work.

In order to be eligible for benefits, the claimant must also show that he took reasonable means to try to preserve his employment. *See* Norfolk County Retirement System, 66 Mass. App. Ct. at 766. The record shows that he did try to preserve his job by asking his mother to inform the employer about his situation, which we think was reasonable under the circumstances.

We, therefore, conclude as a matter of law that the claimant’s separation from employment was for an urgent, compelling, and necessitous reason within the meaning of G.L. c. 151A, § 25(e). Benefits shall not be charged to the employer’s account but shall be charged to the solvency account pursuant to G.L. c. 151A, § 14(d).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning September 30, 2018, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 14, 2019



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.

SVL/rh