

**Board of Review  
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**Issue ID: 0028 3601 14**

## **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 the claimant benefits following his separation from employment on or about July 16, 2018. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On April 9, 2019, 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 June 5, 2019, the review examiner affirmed the agency determination, concluding 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). The Board accepts the claimant's application for review.

### **Ruling of the Board**

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's findings of fact are supported by substantial and credible evidence in the record.<sup>1</sup> We also believe that the decision to deny benefits is free from any error of law affecting substantive rights.

We make, however, one observation regarding the review examiner's reasoning in Part III of his decision. The review examiner found that the claimant's arrest on or about July 8, 2018, resulted from an interaction he had with the mother of his daughter. At the time of the incident, the claimant was under the influence of opiates and alcohol. During the hearing, the claimant admitted that he was an alcoholic. Based on this testimony, the review examiner concluded that, even though the employer initiated the separation due to the claimant's failure to call out or report for work, it could still be considered an involuntary separation, due in part to the claimant's alcoholism. However, the claimant must also make what appears to be a sincere effort to overcome his alcohol addiction. The review examiner concluded that the claimant had not done so, citing to events after the claimant's separation from employment and after he had been released from a treatment program.

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<sup>1</sup> In his appeal to the Board, the claimant vigorously objects to the finding that the claimant pleaded guilty to charges on October 29, 2018. However, when asked during the hearing if the charges against him had been resolved (the review examiner gave examples, such as the claimant was found guilty, the claimant was not guilty, or there was a trial), the claimant testified, "I pleaded guilty."

In undertaking this analysis, the review examiner was incorrect to focus on events after the claimant's separation from employment. We have held that, for purposes of unemployment benefit eligibility, the proper period of time to focus on, when considering efforts to overcome alcoholism, is prior to the conduct which led to the separation. *See* Board of Review Decision 0026 2284 78 (March 28, 2019); and Board of Review Decision 0024 8076 12 (February 4, 2019).<sup>2</sup> Accordingly, the focus in this case should have been on what the claimant had done prior to July 8, 2018. What happened in October and December of 2018 is irrelevant to the question of whether he separated voluntarily or involuntarily for non-disqualifying reasons in July of 2018. As to any efforts the claimant made to deal with his alcoholism prior to July 8, 2018, the claimant indicated in his testimony that he had not made any efforts. He testified that the programs he began attending in July of 2018, were the first such programs he had participated in.

Based on the record before us, the claimant has not shown that he separated from his job voluntarily or involuntarily under qualifying circumstances. Where the event which led to his arrest and subsequent absences from work included conduct he engaged in while under the influence of drugs and alcohol, the claimant has not shown that his separation occurred through no fault of his own. *See Olmeda v. Dir. of Division of Employment Security*, 394 Mass. 1002, 1003 (1985) (rescript opinion).

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<sup>2</sup> Board of Review Decisions 0026 2284 78 and 0024 8076 12 are unpublished decisions, available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning July 15, 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 – June 24, 2019**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, Esq. 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](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