After the claimant pled to sufficient facts, he lost his license and was unable to continue to be a truck driver for the employer. However, because a CWOF is insufficient to show that the claimant did anything wrong, and because his plea was later vacated and the Commonwealth submitted a *nolle prosequi* on the charge, there is insufficient evidence to show that the claimant brought his unemployment upon himself. Therefore, he is not disqualified for benefits under G.L. c. 151A, § 25(e)(1).

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member

Issue ID: 0030 3416 27

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 reverse.

The claimant separated from his position with the employer on or about March 20, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 14, 2019. 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 August 7, 2019.

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 remanded the case to the review examiner to take additional evidence from the claimant regarding various court documents submitted with the claimant's appeal to the Board. Only the claimant 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 to deny benefits pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant lost his driver's license after admitting to sufficient facts of the charge against him, but his plea was later vacated by the court and ultimately dismissed after the Commonwealth filed a *nolle prosequi*.

Findings of Fact

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

1. The claimant worked full-time as a truck driver for the employer's carrier business from 1/23/10 until approximately 3/20/19. The claimant's work involved driving a truck and transporting parcels from New England to the District of Columbia.

2. On 11/2/18, the claimant was involved in a motor vehicle accident where he struck an unoccupied vehicle. The claimant left the accident scene and did not contact the police. On 3/11/19, the claimant admitted to sufficient facts and the charge of leaving the scene of property damage was continued without a finding. The claimant agreed to this plea because his attorney advised him to do so. The claimant expected that he would be fined; he did not expect that his license would be suspended.

3. On 3/21/19, the claimant's license to operate was suspended for one year.

4. The employer learned from the claimant that the claimant's license to operate was suspended. The claimant offered to work at the employer's office, performing maintenance and office work. The employer declined this offer because of a language barrier. English is not the claimant's first language. The employer requested the claimant assist with training new employees. The claimant assisted with this training until the new employees were familiar with their work. The claimant stopped performing this work on or about 3/20/19. If the claimant's license had not been suspended, he would have continued working for the employer after 3/20/19.

5. The claimant filed an initial claim for unemployment insurance benefits, effective 3/31/19.

6. After learning that [his] license to operate was suspended because of his plea, the claimant sought legal counsel in order to try to regain his license. On 6/11/19, the charge against the claimant was dismissed.

7. On 6/14/19, the DUA issued the claimant a Notice of Disqualification, finding him ineligible for benefits under Section 25(e)(1) of the law.

8. On 6/21/19, the claimant appealed the Notice of Disqualification.

9. On 7/2/19, the claimant's plea was vacated and he became eligible for reinstatement of his license.

10. The claimant learned that sometime in June 2019, the employer closed its business and all of its employees lost their jobs. The claimant learned that the employer was alleged to have overcharged the [Name of Entity] and

> consequently was facing a legal charge. The claimant received a written notice from the U.S. Department of Justice, dated 3/9/19, informing him that he was a potential victim of a crime, allegedly committed by the owner of the employer's business.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. In Consolidated Finding of Fact # 2, regarding the claimant's accident in November of 2018, the review examiner found that the claimant "struck an unoccupied vehicle" and "left the accident scene and did not contact the police." However, the circumstances of what happened during the accident are not clear from the record. The claimant testified that he had a traffic accident, there was a witness, and he left information about insurance and the employer with the witness. In short, there is not enough evidence to make a finding that the claimant hit another vehicle or that he did not contact the police. Thus, we accept the first sentence of Consolidated Finding of Fact # 2 through the phrase "motor vehicle accident" only. We reject the second sentence of the finding. We also accept the final three sentences of the finding. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we reject the review examiner's legal conclusion that the claimant is subject to disqualification from the receipt of unemployment benefits.

The review examiner decided this case under 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.

The review examiner concluded that the claimant was ineligible to receive unemployment benefits, because he was "responsible for [the] impediment to his continued employment." She noted that none of the circumstances presented, including the claimant pleading guilty to a crime, indicated that he separated with good cause or involuntarily. The Massachusetts Supreme Judicial Court has held that "a person who causes the statutory impediment that bars his employment leaves his employment 'voluntarily' within the meaning of Section 25(e)(1) when the employer realizes the impediment and terminates the employment." Rivard v. Dir. of Division of Employment Security, 387 Mass. 528, 528–529 (1982). 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 "[providing] compensation for those who are thrown out of work through no fault of their own." Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002, 1003 (1985) (rescript opinion).

In this case, because the claimant lost his license due to the legal proceedings against him, the employer was no longer able to employ him as a truck driver. The employer was forced to separate the claimant from employment. Therefore, we think that the review examiner was correct in concluding that G.L. c. 151A, § 25(e)(1) applies in this matter.

The question remains, however, as to whether the claimant brought his unemployment (through the loss of his license) upon himself, such that he would be ineligible for benefits pursuant to the reasoning of Rivard and Olmeda. Following our review of the record after the first hearing, the Board remanded this matter so that the review examiner could further explore the circumstances of the claimant's separation. During the remand hearing, several court documents were entered into the record, clarifying what happened. In March of 2019, the claimant pled to sufficient facts of leaving the scene of property damage, and the matter was continued without a finding (CWOF). This resulted in the loss of the claimant's license. The charge against the claimant was later vacated, and ultimately dismissed, when the Commonwealth filed a *nolle prosequi*.[1]

It is apparent that the loss of the license stemmed directly from the CWOF in March of 2019. However, an admission to sufficient facts, and the associated CWOF, is insufficient on its own to show that a claimant was responsible for, guilty of, or at fault for the charges against him. "An admission to sufficient facts, absent a subsequent finding of guilt, does not constitute substantial evidence from which a finder of fact in a collateral civil proceeding can determine that the alleged misconduct has indeed occurred." Wardell v. Dir. of Division of Employment Security, 397 Mass. 433, 436–437 (1986). Similarly, the admission to sufficient facts in court is not an act which subjects a claimant to disqualification. *See* Santos v. Dir. of Division of Employment Security, 398 Mass. 471, 472 (1986). "An admission to sufficient facts is not an act of 'misconduct.'" Id.[2] Here, although the claimant's separation resulted from the loss of the license, we cannot say that the claimant brought his unemployment upon himself, where the loss was due to the admission to sufficient facts and the associated CWOF, and those legal proceedings are insufficient to show that the claimant did anything wrong.

In addition, the *nolle prosequi* effectively dismissed the charge against the claimant without any finding of guilt or responsibility. The review examiner's findings of fact are insufficient to conclude that the claimant's actions brought about the criminal charge against him, or his subsequent loss of license. *See* Board of Review Decision 0015 9093 69 (Sept. 2, 2016) (claimant who missed work due to incarceration involuntarily separated from work where record shows that incarceration was due to circumstances beyond his control and charges were eventually dismissed). Effectively, the Commonwealth abandoned its intent to prosecute the claimant on this charge and notified the court of such by filing a *nolle prosequi*. Again, this shows a lack of evidence present to render a conclusion that the claimant was at fault for the charge issued against him, his loss of license, and, ultimately, his separation from employment.

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[1] We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

[2] Both Wardell and Santos dealt with applications of G.L. c. 151A, § 25(e)(2). However, the underlying reasoning, as to what an admission to sufficient facts or a CWOF shows or proves for purposes of an unemployment benefits hearing, can reasonably be applied in other contexts, such as the circumstance presented by this case.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits is not supported by substantial and credible evidence or free from error of law, where there is insufficient evidence to show that the claimant brought his unemployment upon himself. Consequently, he cannot be denied benefits under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning March 17, 2019, and for subsequent weeks if otherwise eligible.

Charlene A. Stawicki

BOSTON, MASSACHUSETTS
DATE OF DECISION – October 28, 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

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