

**Board of Review  
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Member  
Michael J. Albano  
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**Issue ID: 0030 9336 01**

## **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 April 12, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

On July 18, 2019, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed, and both parties attended the hearings. In a decision rendered on October 26, 2019, the review examiner reversed the agency determination, concluding 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). The Board accepted the claimant's application for review.

### **Findings of Fact**

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

1. The employer is a portable storage company. The claimant worked as a full-time driver and container deliverer for the employer. The claimant worked for the employer from May 2015 to 4/12/19.
2. Upon hire, the employer told the claimant that it would require him to work overtime. Upon hire, the claimant agreed to work overtime.
3. The claimant had a commercial driver's license when he worked for the employer.
4. The claimant drove routes for the employer. On these routes, the claimant drove the employer's truck and delivered portable storage containers.
5. The employer assigned a route for the claimant to work for each of his shifts. The employer created a route sheet for each route. The route sheets featured an estimated end time for the route. The employer expected the claimant to perform the work on the route until all of the work on the route was done.

Sometimes this required the claimant to continue to work after the estimated end times. The claimant worked under this system for his entire employment.

6. The employer tried to schedule its drivers to finish their daily routes around the same time. If a driver could not finish his or her route, the employer would assign the remainder of the route to another driver. The claimant never called the employer while out on a route to report that he could not finish the route.
7. The claimant worked twelve to thirteen hours on some days. He did this throughout his entire employment.
8. In 2015, the claimant told the employer that he worked too many hours. After this, the claimant continued to work twelve to thirteen hours on some shifts.
9. The claimant worked 82.45 hours in the period 3/29/18 through 4/11/18.
10. The claimant worked 81.26 hours in the period 4/12/18 through 4/25/18.
11. The claimant worked 82.93 hours in the period 4/26/18 through 5/09/18.
12. The claimant worked 88.25 hours in the period 5/10/18 through 5/23/18.
13. The claimant worked 100.35 hours in the period 5/24/18 through 6/06/18.
14. The claimant worked 120.76 hours in the period 6/07/18 through 6/20/18.
15. The claimant worked 94.04 hours in the period 6/21/18 through 7/04/18.
16. The claimant worked 130 hours in the period 7/05/18 through 7/18/18.
17. The claimant worked 90.38 hours in the period 7/19/18 through 8/01/18.
18. The claimant worked 107.87 hours in the period 8/02/18 through 8/15/18.
19. The claimant worked 73.8 hours in the period 8/16/18 through 8/29/18.
20. The claimant worked 98.3 hours in the period 8/30/18 through 9/12/18.
21. The claimant worked 102.95 hours in the period 9/13/18 through 9/26/18.
22. The claimant worked 61.24 hours in the period 9/27/18 through 10/10/18.
23. The claimant worked 86.69 hours in the period 10/11/18 through 10/24/18.
24. The claimant worked 57.44 hours in the period 10/25/18 through 11/07/18.

25. The claimant worked 90.44 hours in the period 11/08/18 through 11/21/18.
26. The claimant worked 72.77 hours in the period 11/22/18 through 12/05/18.
27. The claimant worked 92.97 hours in the period 12/06/18 through 12/19/18.
28. The claimant worked 72.6 hours in the period 12/20/18 through 1/02/19.
29. The claimant worked 52.98 hours in the period 1/03/19 through 1/16/19.
30. The claimant worked 56.47 hours in the period 1/17/19 through 1/30/19.
31. The claimant worked 33.55 hours in the period 1/31/19 through 2/13/19.
32. The claimant did not work in the period 2/14/19 through 2/27/19.
33. The claimant did not work in the period 2/28/19 through 3/13/19.
34. The claimant worked 85.71 hours in the period 3/14/19 through 3/27/19.
35. The U.S. Department of Transportation did not allow the claimant to work more than sixty hours in a five-day period.
36. The claimant worked fifty-nine hours and thirty-four minutes in the period 4/01/19 through 4/05/19.
37. The employer never required the claimant to work over sixty hours in a five-day span.
38. The claimant submitted a resignation letter to the employer on or around 4/09/19. In the letter, the claimant offered to work through 4/22/19.
39. The claimant resigned from his employment because he was dissatisfied with the number of hours he worked in each week.
40. The employer did not allow the claimant to work through 4/22/19 because it was in a slow work period.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the 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 findings of fact and deems them to be supported by substantial and credible evidence. Furthermore, after considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's

appeal, we conclude that the part of the review examiner's decision stating that the claimant voluntarily quit his employment without good cause attributable to the employer, or urgent, compelling, and necessitous reasons, is based on substantial evidence and is free from any error of law affecting substantive rights.

However, we disagree with the part of the review examiner's decision which denied benefits to the claimant beginning on April 14, 2019. At the time the claimant tendered his resignation to the employer, he offered to work through April 22<sup>nd</sup>, but the employer did not let him work out his notice period beyond April 12<sup>th</sup>. Since the employer terminated the claimant's employment prior to April 22<sup>nd</sup> because its business was slow and not due to misconduct or a rule violation on the claimant's part, the claimant's period of disqualification does not begin until the week beginning April 21, 2019.

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week ending April 20, 2019. However, he is denied benefits for the week ending April 27, 2019, 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 - January 30, 2020**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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.

SVL/rh