

Teacher hired under special waiver to teach special education students with moderate disabilities failed to take any steps to obtain the necessary license or to show progress toward meeting the specific requirements of the job. Although he had to take a medical leave in March, he failed to show that he took reasonable steps to obtain the training before the leave, or that he'd planned to do anything between March and the end of the school year. He brought his unemployment on himself and became ineligible for benefits under G.L. c. 151A, § 25(e)(1), when the employer declined to renew his contract.

**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: 0031 2994 69

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 affirm.

The claimant was discharged from his position with the employer on June 19, 2019. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on July 2, 2019. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on August 23, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having good cause attributable to the employer or urgent, compelling, and necessitous circumstances and, thus, he 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 remanded the case to the review examiner to obtain additional evidence about progress that the claimant may have made toward his teacher certification requirements prior to his unexpected medical leave. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his 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 original decision, which concluded that the claimant brought about his own unemployment by failing to take steps toward licensure for his special education position, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time for the employer, a public-school system, as a special education teacher, from August 26, 2018 until June 19, 2019. The claimant was paid about \$63,000.00 per year.
2. The claimant is licensed to teach middle school (Grades 5-8) mathematics.
3. In 2013, the claimant passed MTEL Communications and Literacy exams relating to middle school mathematics licensure.
4. The claimant was hired for the 2018-2019 school year based on a waiver of a teacher's license for teaching special education students with moderate disabilities.
5. Prior to his hire date, the claimant successfully completed college Calculus II (06/05/17 - 08/10/17) and Calculus III (09/05/17 - 12/21/17) courses. (Remand Exhibit 12)
6. Prior to his hire date, the claimant was preparing for "09 MTEL High School Licensure."
7. On September 21, 2018, the claimant was issued a letter by the employer, which stated:

Dear [Claimant]:

[Employer] may apply for hardship waivers for educators employed in district-determined critical needs areas. Currently, [Employer] has identified English as second language, math, Special Education, and science as critical needs areas. The MA Department of Elementary and Secondary Education (DESE) will grant hardship waivers which are valid from July 1 through June 30 each school year.

[Employer] expects educators under hardship to understand the licensing requirements for the subject area in which they have been employed and complete the license requirements within the same school year. DESE has provided an online licensure requirement tool to determine the specific requirements for each educator license; This tool can be found at the following web address:
<https://gateway.edu.state.ma.us/elar/licensurehelp/LicenseRequirementsCriteriaPageControl.ser>

Educators employed in subject areas whose license requirements include competency review may be eligible for a subsequent hardship waiver if DESE's continuous progress requirements have been met. Educators are expected to understand how to meet DESE's continuous progress requirements and time frames. For more specific information regarding how DESE calculates continuous progress, please visit the following address:

<http://www.mass.gov/edu/government/departments-and-boards/ese/programs/educator-effectiveness/licensure/disticts/how-continuous-progress-is-calculated-for-an-additional.html>.

Human Resources can assist you with uploading documentation to your ELAR profile and help you navigate the waiver application process. If you have questions regarding your waiver status, please contact [Name] in Human Resources at [name]@[Employer].com. (Exhibit 8, Page 1)

8. The claimant received the letter.
9. In October 2018, the claimant began taking an English Language Learners endorsement course as directed by the employer. The claimant was not going to teach English as a Second Language. The claimant was going to teach special education students with moderate disabilities. The claimant stopped taking the course in November 2018 because he learned it was not the correct course and was going to register for the correct Special Education course.
10. The claimant did not register for the correct Special Education course in the 2018-2019 school year.
11. On November 1, 2018, the claimant was issued a letter by Human Resources, which stated:

To: [Claimant]

[Employer] has hired you under a licensure waiver for educators employed in district-determined critical needs areas. Educators under these waivers are expected to understand licensing requirements for the subject area in which they have been employed. Each educator license has MA Tests for Educator License (MTEL) requirements. In addition, some subject area licenses have competency requirements and/or graduate work coursework requirements. DESE has provided an online licensure requirement tool to determine the specific requirements for each educator license. This tool can be found at the following web address:

<https://gateway.edu.state.ma.us/elar/licensurehelp/LicenseRequirementsCriteriaPageControl.ser>.

[Employer] expects educators employed under licensure waivers to complete the license requirements within the same school year. Educators employed in subject areas whose license requirements include competency reviews may be eligible for a subsequent hardship waiver if DESE's continuous progress requirements have been met. Educators are expected to understand how to meet DESE's continuous progress requirements and timeframes. For more specific information regarding how DESE calculates continuous progress, please visit the following address:

<http://www.mass.gov/edu/government/departments-and-boards/ese/programs/educator-effectiveness/licensure/disticts/how-continuous-progress-is-calculated-for-an-additional.html>.

DESE grants hardship waivers which are valid from July 1 through June 30 each school year, regardless of your hire date. Hiring decisions will be made based on the continuous progress documentation submitted to Human Resources by April 1, 2019. If you need assistance with uploading documentation to your ELAR profile or have questions regarding the waiver process, please contact Human Resources and speak to the HR Analyst who works with your school. (Exhibit 8, Page 2)

12. The claimant received the letter.
13. On February 1, 2019, Human Resources provided the claimant with written notification regarding Licensure/Continuous Progress Documentation which stated, in part:

This memorandum serves as a reminder to educators hired under a licensure waiver to send evidence of progress toward licensure to Human Resources. Although principals make hiring decisions for SY20 based on documentation received by April 30, 2019, please send evidence of continuous progress activities that you have not submitted to Human Resources as soon as possible. *Failure to submit documentation demonstrating either attainment of appropriate subject area licensure or meeting DESE's continuous progress requirements will result in non-renewal as an unlicensed teacher at the end of the 2018/2019 school year.*

DESE's licensure waivers expires on June 30 each year. [Employer] expects educators employed on licensure waivers to pass all necessary MTEL to obtain licensure within the school year. If an educator is unable to obtain licensure in an area with a competency review within the school year, [Employer] may request an additional waiver if the educator has met DESE's definition of continuous progress of obtaining six (6) points. DESE's website outlining the guidelines to calculate continuous progress is found at: <http://www.doe.mass.edu/licensure/resources/continuous-progress-additional->

waiver.html. The following chart outlines DESE’s Continuous Progress Point Value System:

DESE’s Continuous Progress Point Value System

Requirement Completed:	Point(s) Earned
One semester credit of college coursework	1
Passing a full MTEL (e.g. Communication & Literacy – both Reading & Writing)	2
Passing a subset of an MTEL (e.g. Communication & Literacy – Reading only)	1
DEI Endorsement requirement completed and approved	2
For Moderate Disabilities, Severe Disabilities, Library, and other licenses which require a competency review only : Meeting “coverage” competency through 10 PDP/10 hrs. of mentored experience	1

Acceptable documentation demonstrating continuous progress requirements include:

- Official transcripts of graduate coursework relating to the licensure area
- Score sheets confirming successful completion of appropriate licensure area
MTEL
- Professional development certificates and/or mentoring letters (for competency review subject area licenses only) (Exhibit 10)

14. The claimant received the letter.

15. On February 15, 2019, the claimant attempted to register for an MTEL High School Math exam for later in the month. The claimant learned the test site, a building named Monarch Place located in Springfield, Massachusetts was filled. The next MTEL test date was in June 2019. The claimant did not register at that time for the June 2019 MTEL exam because he thought spaces would still be available because the test was in the summer and he was going to use the \$155.00 registration fee to pay bills.

16. On or about March 20, 2019, the claimant suffered a stroke.

17. The claimant was placed on Family Medical Leave Act (FMLA) leave effective March 21, 2019.

18. On April 1, 2019, the employer sent a letter to the claimant, which stated, in part:

The Human Resources sent continuous progress reminders to educators employed under licensure waivers in November 2018 and February 2019. Per district policy, educators who are employed on subsequent waivers should be appropriately licensed to be eligible for recall/rehire. Educators who are currently in their first year of teaching on a waiver and who have met continuous progress requirements will be eligible for rehire for the upcoming school year.

Please access DESE's website outlining continuing progress requirements at the following web address:

<http://www.doe.mass.edu.licensure/resources/continous-progress-additional-waiver.html>.

Principals will begin making staffing decisions based on the continuous progress documentation submitted by April 15, 2019. Please forward any additional evidence of continuous progress (e.g. official transcripts, MTEL score sheets, MLP PD transcript) as soon as possible. If you meet continuous progress requirements after April 15, please contact the principal and Human Resources to determine if a teaching position is available. If you have any questions regarding this process, contact Human Resources Analyst who works with your school. (Exhibit 11)

19. On May 6, 2019, the employer sent a letter to the claimant, stating in part:

I regret to inform you that as a non-licensed, waiver teacher without Professional Teacher Status, [Employer] is unable to continue your employment after the close of the current school year, which is currently scheduled the end of the business day, June 19, 2019."

If you hold a valid MA DESE teaching license in another area, or attain a license in the future, you are eligible to re-apply for a position for which you are licensed and Highly Qualified. Please do so by applying on-line: [www.\[Employer\].com](http://www.[Employer].com).

20. The employer was unable to continue the claimant's employment due to his failure to show continuous progress toward licensure.

21. The claimant did not go to the DESE website or contact Human Resources to determine what requirements he needed to satisfy to meet “continuous progress” because: “I knew what I needed.”
22. In the 2018-2019 school year, the claimant did not take a college level course.
23. In the 2018-2019 school year, the claimant did not enroll in an MTEL exam or a subset of an MTEL exam which he was unable to complete due to his stroke.
24. In the 2018-2019 school year, the claimant did not register for the correct Special Education course.
25. The steps the claimant took did not satisfy DESE’s requirements of showing “continuous progress” (6 points) toward obtaining his required licensure as set forth in the February 1, 2019 correspondence (Exhibit 10).

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. Upon such review, the Board adopts the review examiner’s consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner’s legal conclusion that the claimant is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

The review examiner rendered his decision under the following provisions of G.L. c. 151A, § 25(e):

[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.

We first consider whether the claimant’s separation was properly analyzed under this section of law.

The review examiner concluded that the claimant caused his own separation. Although, technically, the employer discharged the claimant, we believe the review examiner correctly applied 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.)

Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion) (the Court upheld the denial of unemployment benefits to a claimant who was unable to work, because his driver’s license was suspended for a year following a conviction for driving while intoxicated).

In this case, the consolidated findings show that the employer hired the claimant for the 2018–2019 school year to teach special education students with moderate disabilities under a special waiver of the licensure requirement for teaching such special education students. *See* Consolidated Finding # 4. The claimant had a license to teach middle school math and had been preparing to obtain the license to teach high school math, but, apparently, he was not licensed in special education. *See* Consolidated Findings ## 2, 3, and 6. The employer had notified him via letters sent on September 21, 2018, November 1, 2018, and February 1, 2019, that he had to either obtain licensure in the subject area that he was employed, which was special education for students with moderate disabilities, or show that he was making continuous progress toward such licensure in order to continue his employment. *See* Consolidated Findings ## 7–9 and 11–14. He needed to do this during the 2018–2019 school year. *See* Consolidated Findings ## 7, 11, and 13. These letters also communicated that it was incumbent upon the claimant to understand the necessary licensure and continuous progress requirements that were posted on the Department of Elementary and Secondary Education (DESE) website. *See* Consolidated Findings ## 7, 11, and 13. Because he did not obtain the special education license or show continuous progress toward that license by the deadline, the claimant was terminated as of June 19, 2019. *See* Consolidated Findings ## 19 and 20.

In reviewing the initial record, we considered that, on about March 20, 2019, the claimant had a stroke, which forced him out on medical leave. Consolidated Findings ## 16 and 17. If he was unable to meet the employer’s expectations because of this medical incident, then we might have attributed his separation to urgent, compelling, and necessitous circumstances, a factor beyond his control. We remanded to find out what efforts the claimant had been making to obtain the necessary special education credentials before his stroke and whether it prevented him from meeting the requirements for continued employment.

After remand, it is evident that the claimant did not make a concerted effort to keep his job before his stroke or have any plan for fulfilling the employer’s expectations in the months immediately after. Although he enrolled in an English Language Learners course in October, 2018, it was not a course he needed to teach special education students with moderate

disabilities. *See* Consolidated Finding # 9. Presumably, he could have avoided this mistake if he had followed the instructions in the employer's September 21, 2018, letter to understand the DESE requirements for licensure or continuous progress. But, he did not go to the DESE website or contact human resources to find out. *See* Consolidated Finding # 21. Even if someone in the employer's school district misadvised him to take that English Language Learners class, the claimant realized the mistake in November. Between November and March 20, 2019, when his medical leave began, he failed to register for the correct special education course or take any steps toward showing continuous progress, which were necessary to obtain a continued waiver. *See* Consolidated Findings ## 13, 22, 24, and 25.

In short, we agree that the claimant did not separate due to urgent, compelling, and necessitous circumstances. He has failed to demonstrate that he lost his job due to any factor other than his own lack of effort in meeting the employer's reasonable expectation to obtain the necessary training for his job.

We, therefore, conclude as a matter of law that the claimant brought his own unemployment on himself and he is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning June 9, 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 - November 25, 2019



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.

AB/rh