

**Where the claimant failed to report for work or notify her employer that she would be absent for a week to attend a funeral out of state, she is deemed to have abandoned her job and is ineligible for benefits under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0031 3406 45**

## **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 her separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On July 20, 2019, the agency initially determined that the claimant was entitled to unemployment benefits, pursuant to the provisions of G.L. c. 151A, § 25(e)(2). The employer appealed, and both parties attended the hearing. In a decision rendered on August 28, 2019, the review examiner reversed 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.

### **Findings of Fact**

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

1. The employer is a shoe manufacturer. The claimant worked as a full-time line worker for the employer. The claimant worked for the employer from 9/24/18 to 6/07/19.
2. The employer's production manager supervised the claimant.
3. The claimant worked Monday through Friday.
4. The claimant's aunt passed away in North Carolina. The claimant's younger brother lives in North Carolina. He drove to Massachusetts, picked up the claimant, and drove her to North Carolina on 6/09/19 into 6/10/19.

5. The claimant did not present for a scheduled shift on 6/10/19. The claimant did not report this absence to the employer before or on 6/10/19.
6. The claimant's significant other called the production manager on 6/11/19. The significant other reported that the claimant's aunt passed away. The production manager asked when this happened, where it happened, and when the claimant planned to return to work. The significant other did not answer these questions and did not provide any additional information.
7. The claimant remained in North Carolina from 6/10/19 into 6/15/19. The claimant's older brother drove the claimant back to Massachusetts on 6/15/19.
8. The claimant did not contact or attempt to contact the employer in the period 6/10/19 through 6/16/19.
9. The claimant called the production manager on 6/17/19. In this conversation, the claimant did not ask the employer if [sic] she could return to work. The claimant apologized for her absence. The production manager told the claimant that it was impossible to allow her to return to work.
10. After 6/10/19, the claimant never asked the employer if she could return to work.
11. The claimant quit her employment because she was dissatisfied with it.

#### 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, except for Finding of Fact # 11, which we reject.

In Finding of Fact # 11, the review examiner found that the claimant quit her job, "because she was dissatisfied with it." However, the record does not support such a finding. The review examiner's other findings, the testimony from the parties, and the review examiner's own conclusions indicate that the claimant abandoned her job by failing to keep in contact with the employer regarding her absences after June 7, 2019. The claimant did not make an affirmative decision to quit her job, as suggested by Finding of Fact # 11. She brought about her own separation and is disqualified under G.L. c. 151A, § 25(e)(1), due to her failure to notify the employer that she would not be in to work after June 7, 2019. *See Olechnicky v. Dir. of Division of Employment Security*, 325 Mass. 660, 661 (1950) (upholding Board of Review's conclusion that failure of employee to notify his employer of reason for absence is tantamount to a voluntary leaving of employment within the meaning of G.L. c. 151A, § 25(e)(1)).

In his conclusion, the review examiner stated the following:

The claimant failed to establish that she left her employment for good cause attributable to the employer. The record does not feature any information to support a conclusion that the employer created good cause for the claimant to leave her employment.

The claimant failed to establish that she left her employment for urgent, compelling, and necessitous reasons. In the hearing, the claimant testified that she went to North Carolina because her aunt had passed away. However, the claimant did not establish that this circumstance necessitated her separation from employment. More specifically, the claimant failed to show that this circumstance left her with no choice but to abandon her employment. Indeed, in the hearing, the claimant did not provide any good cause reason why she did not remain in contact with the employer. The claimant's significant other called the employer but did not report when the claimant planned to return to work. In the hearing, the claimant testified that she did not contact the employer herself because she did not have her cellular telephone with her in North Carolina and that she did not have the employer's telephone number. However, the claimant did not give any good cause reason why she could not contact the employer despite these alleged limitations. In the hearing, the claimant admitted that it was "her fault" that she did not ask her significant other for the employer's telephone number and she did not give any reason why she did not look up the telephone number and use another telephone to call.

We think this conclusion accurately summarizes the testimony and reasonably interprets the evidence. Thus, we conclude that the review examiner's decision to deny benefits under G.L. c. 151A, § 25(e)(1), is based on substantial evidence and is free from any error of law affecting substantive rights.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning June 16, 2019, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - October 4, 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](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