

Teacher on special education waiver failed to make sufficient continuous progress toward obtaining his license. He also failed to demonstrate compelling financial circumstances that prevented him from saving for the MTEL examination over the course of his employment.

**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 4188 32

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 separated from his position with the employer on June 17, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 27, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on September 20, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer and without 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 remanded the case to the review examiner to take additional evidence regarding the claimant's efforts to make continuous progress toward obtaining a teaching license during the 2018-2019 school year, as well as regarding his financial obligations during that period of time. 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 decision to deny benefits under G.L. c. 151A, § 25(e)(2), is supported by substantial and credible evidence and is free from error of law, where the review examiner concluded that the claimant was responsible for his separation because he had failed to establish continuous progress toward obtaining a required teaching license during the 2019-2019 school year.

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, from August 31, 2018, to June 17, 2019, as a Special Education Teacher.
2. Waivers are granted on a school year-to-year basis expiring on June 30th.
3. The employer (and the state licensing authority) had an expectation that the claimant make continuous progress towards obtainment of professional licensure. The state defined continuous progress as obtaining six points.
4. The claimant was aware of the expectation.
5. The purpose of the expectation is to comply with state regulations.
6. The claimant already passed the two sections of the required MTEL and held a bachelor's degree.
7. During the 2018–19 school year (October 2018 to January 2019), the claimant completed a Sheltered English Immersion (SEI) course, which was valued at 2 points, but which also counted for three credits of graduate coursework through American International College (English Language Learners).
8. The claimant also participated in professional development of approximately ten hours, which was valued at 1 point and which took place in May and June of 2019.
9. The claimant did not take any other college coursework.
10. The employer received the training documentation upon completion of each program.
11. The claimant did not register for an MTEL exam.
12. The claimant did not have additional money to take the MTEL.
13. The claimant's gross monthly income was \$5,912.65. At the end of the 2018–19 school year, the employer deducted \$743.90 from his paycheck because of an earlier overpayment representing four weeks of extra pay. The claimant had standard deduction [sic] for health insurance, dental insurance, retirement, state and federal taxes, but also student loan garnishments of \$777.46 per month for a total of \$2,464.29 in deductions leaving the claimant with a net income of \$2,703.54 per month.
14. The exams that the claimant is [sic] still required to take cost between \$100.00 and \$200.00.

15. From September 22, 2018, to July 5, 2019, the claimant was scheduled to pay double his rent per a settlement agreement through the Housing Court due to the claimant (and another individual) being in arrears on rent. The claimant's regular rent payment was \$1,250.00 per month.
16. The employer issued letters throughout the school year reminding the claimant of the continuous progress requirements.
17. Because his waiver license was set to expire on June 30, 2019, on May 6, 2019, the claimant was informed that the employer was unable to continue his employment beyond the close of the school year.
18. The employer was required to attempt to fill the position with an appropriately licensed Teacher.
19. The claimant worked through June 19, 2019.
20. The employer posted the claimant's position.
21. The claimant applied for the position, but the employer filled the position in the next academic year with a licensed Teacher as required.
22. The claimant could obtain another waiver if a vacancy was available and if the employer hired the claimant for the position. No vacancy was available to the claimant in the next academic school year.
23. The claimant has not yet earned his teaching license. The claimant only needs to pass the remaining MTEL tests (*i.e.* General Curriculum, Subject Matter, Special Education).

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact, except for Consolidated Finding of Fact # 12, which is inconsistent with Consolidated Finding # 13 and documentary evidence submitted as Remand Exhibit 5. We deem the remaining findings to be supported by substantial and credible evidence. We conclude, as the review examiner did, that the claimant is not eligible to receive unemployment benefits.

The review examiner properly decided this case as a voluntary separation. When a claimant somehow precludes an employer from continuing to employ him, the claimant is deemed to have brought on his own unemployment, and G.L. c. 151A, § 25(e)(1), the section applicable to voluntary separations, applies. *See Olmeda v. Dir. of Division of Employment Security*, 394 Mass. 1002 (1985) (claimant who lost his license, so he could not get to work, brought unemployment upon himself and suffers disqualification under G.L. c. 151A,

§ 25(e)(1)); Rivard v. Dir. of Division of Employment Security, 387 Mass. 528, 528–529 (1982) (“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”); Borroni v. Dir. of Division of Unemployment Assistance, No. 13-P-442, 2014 WL 2861755 (Mass. App. Ct. June 25, 2014), *summary decision pursuant to rule 1:28* (upholding disqualification under G.L. c. 151A, § 25(e)(1), for teacher who failed to take action toward obtaining standard educator certificate when she knew that her provisional certificate would soon lapse). Here, the claimant did not establish continuous progress toward attaining his teaching license, and this caused his employer to have to sever the employment relationship at the end of the 2018-2019 school year.

Because the claimant’s separation is deemed voluntary, his eligibility for benefits is governed by 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.

Under this section of law, the claimant has the burden to show that he is entitled to benefits. Crane v. Comm’r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

When a claimant becomes separated due to the loss of a license required for the performance of his job duties, for failing to maintain a license, or for not undertaking efforts to obtain a license, the claimant’s fault with respect to the loss or failure must be considered. This is because unemployment benefits are intended for persons who are out of work and unable to secure work through no fault of their own. Connolly v. Dir. of Division of Unemployment Assistance, 460 Mass. 24, 25 (2011) (quotes and citations omitted). If a claimant makes diligent efforts to obtain or retain his license, but circumstances combine which nonetheless result in a separation, the claimant would not be at fault and would be eligible for benefits. *See* Board of Review Decision 0012 7337 53 (Oct. 10, 2014). On the other hand, if a claimant fails to make reasonable efforts to fulfill the licensure requirements, and the employer must end the claimant’s employment due to a lack of a license, then the claimant would be subject to disqualification. *See* Board of Review Decision 0015 7052 69 (Sept. 8, 2015).¹

It was undisputed that the claimant needed to make continuous progress in order for the employer to continue to employ him on a waiver during the 2019–2020 school year. This is true, even though the employer would have to replace the claimant if it found a qualified, licensed teacher to take over the claimant’s position. *See* Consolidated Findings of Fact ## 3 and 18. For the claimant to keep his job, two conditions needed to be met: (1) there was no qualified, licensed teacher available, and (2) the claimant had to establish continuous progress. The

¹ Board of Review Decisions 0012 7337 53 and 0015 7052 69 are unpublished decisions, available upon request. For privacy reasons, identifying information is redacted.

claimant had control over the latter requirement. Although the employer ended up hiring someone else for the claimant's position, *see* Consolidated Finding of Fact # 21, the claimant needed to put himself in a position where he could be retained as an employee in the same capacity as he had been teaching in the 2018–2019 school year. To do this, he needed to establish continuous progress.²

The review examiner found that the claimant needed to earn six points by undertaking various different activities in order to meet the continuous progress requirement, as set forth by the Massachusetts Department of Elementary and Secondary Education (DESE). *See* Consolidated Finding of Fact # 3 and Hearing Exhibits 4–7. The claimant admits that he did not obtain the necessary six points. The review examiner found that the claimant completed a Sheltered English Immersion (SEI) course valued at two points between October, 2018 and January, 2019. *See* Consolidated Finding of Fact # 7. He also accepted as credible the claimant's contention that this SEI course also counted for credit toward graduate course work through the American International College. *Id.* The review examiner also found that the claimant earned one point for professional development which he performed in May and June of 2019. *See* Consolidated Finding of Fact # 8.

However, he made no other efforts to obtain any points during the academic year 2018–2019. He did not take any formal college coursework, and he did not register for an MTEL examination, even though the MTEL examination fees were only approximately \$100.00 to \$200.00. *See* Consolidated Findings of Fact ## 9, 11, and 14. By failing to establish continuous progress, the claimant was not in a position to be retained in his special education teacher position. Thus, we cannot conclude that he was without fault in his separation from employment.

The claimant argued that compelling personal circumstances prevented him from obtaining the necessary six points. “[A] ‘wide variety of personal circumstances’ have been recognized as constituting ‘urgent, compelling and necessitous’ reasons under” G.L. c. 151A, § 25(e), “which may render involuntary a claimant’s departure from work.” Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), *quoting* Reep v. Comm’r of Department of Employment and Training, 412 Mass. 845, 847 (1992). Here, the review examiner found that, from the claimant’s gross monthly income of \$5,912.65, approximately \$777.46 per month in wages were being garnished for unpaid student loans, and the claimant’s net monthly income was \$2,703.54. *See* Consolidated Finding of Fact # 13. The claimant and another individual named as a co-defendant in a Housing Court matter were also subject to a court-approved settlement agreement, whereby they were obliged to pay double their \$1,250.00 monthly rent for ten months from September 22, 2018, through July 5, 2019. *See* Consolidated Finding of Fact # 15 and Remand Exhibits 6–7.

The claimant did not say why he failed to pay his student loans or why he and his roommate did not pay their rent. We can reasonably infer that these debts, too, were of the claimant’s own making. But, even if they were not, we are not persuaded that these financial obligations drove

² If the claimant had fulfilled the state requirements to be eligible for re-appointment but was let go because the employer was able to find a fully licensed educator, then his separation would have been viewed differently for purposes of unemployment benefits. We would have concluded that he separated through no fault of his own, and he would have been eligible under G.L. c. 151A, § 25(e)(2).

the claimant's separation. He knew upon being hired in late August that he had to take the MTEL tests to continue his employment. The test fees were only \$100–\$200. *See Consolidated Finding of Fact # 14.* The employer did not deduct \$743.90 from his paycheck until the end of the school year. *See Consolidated Finding of Fact # 13.* Until then, he could have saved money from each paycheck or even set aside some of the money in early September before the Housing Court settlement to pay for the exams. The claimant has simply not demonstrated that he was unable to save the few hundred dollars for MTEL registration fees over the course of his employment. As such, we decline to conclude that he separated due to compelling financial circumstances.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits is supported by substantial evidence and free from error of law. The claimant is subject to disqualification under G.L. c. 151A, § 25(e)(1), because the claimant failed to take the steps necessary to establish continuous process towards obtaining a teaching license and, therefore, caused his own unemployment.

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 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 - December 30, 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.

JPC/rh