

**The employer discharged the claimant because his driver's license was suspended. Where the claimant's license was suspended due to accumulating points on his record after he received several tickets, the claimant brought his separation upon himself. He is disqualified under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0031 6334 74**

## **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 separated from his position with the employer on or about July 1, 2019. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on September 14, 2019. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 29, 2019.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer 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 allow the claimant an opportunity to provide evidence regarding his separation from employment. Both parties 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 separated from his job after his driver's license was suspended due to the accumulation of points on his driving record.

### **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 from November 13, 2018 until the claimant became separated on July 1, 2019.
2. The claimant's work schedule was 8:00 a.m. to 4:30 p.m., Monday to Friday.
3. The claimant's rate of pay was \$20.00 per hour.
4. The employer's Head Service Technician was the claimant's immediate supervisor.
5. At the time of hire, the claimant was aware that he needed a valid driver's license in order to work for the employer.
6. On April 6, 2019, the claimant received a ticket for operating without equipment as required by Law. The claimant was held responsible for the event.
7. On or about June 2019, the claimant received a ticket for driving his vehicle with a failed inspection ticket. The ticket is not reflected on the claimant's "Driver Record Service Report for Massachusetts" dated June 21, 2019.
8. The claimant's driver's license was suspended indefinitely from July 1, 2019 for accumulation of points.
9. The claimant was required to complete three classes in order to have his license reinstated.
10. The claimant's license was reinstated on August 15, 2019.
11. On August 15, 2019, the claimant fixed his vehicle and obtained valid inspection sticker.
12. The claimant became separated as a result of his Driver's license being suspended.

### 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 conclude that the review examiner applied proper legal principles to deny unemployment benefits.

The review examiner disqualified the claimant pursuant to 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 . . . .

Although the employer testified that it discharged the claimant after it learned that the claimant's driver's license was suspended,<sup>1</sup> the review examiner correctly applied G.L. c. 151A, § 25(e)(1). When a claimant is required to possess a driver's license in order to perform the functions of his job and loses his license due to his own action or inaction, he brings his unemployment upon himself, and the separation is deemed to be voluntary. *See Olmeda v. Dir. of Division of Employment Security*, 394 Mass. 1002 (1985) (rescript opinion) (unemployment benefits denied to claimant who was unable to work due to the fact his driver's license was suspended for a year following a conviction for driving while intoxicated).

In this case, it was undisputed that the claimant needed a driver's license to do his job. Consolidated Finding of Fact # 5.<sup>2</sup> The license was suspended in early July of 2019,<sup>3</sup> after the claimant received multiple motor vehicle tickets. During the remand hearing, the claimant testified that the most recent tickets related to him not having a valid inspection sticker for his vehicle. He admitted to driving his car without a valid inspection sticker. He further testified that, with the assistance of his parents, he was eventually able to fix any issues he had with his car and obtain a valid sticker in August of 2019. The claimant's failure to maintain a valid driver's license was due to his failure to observe the Commonwealth's motor vehicle laws, not due to something beyond his control. Consequently, the principles of *Olmeda* apply, and the claimant is disqualified from receiving unemployment benefits under the above-cited section of law.

We, therefore, conclude as a matter of law that 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 free from error of law, because the claimant caused his own separation when he was unable to continue working for the employer due to his driver's license suspension.

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<sup>1</sup> 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).

<sup>2</sup> The claimant's job duties are not clear. However, the parties testified that the claimant was a helper, or assistant, and that the claimant needed a valid driver's license to do his work.

<sup>3</sup> There was some conflict in the record as to the exact date of the suspension. Some testimony indicated that it was July 1, 2019; other testimony suggested that it was July 2, 2019. For purposes of this decision, the exact date is not relevant. Thus, we have accepted that the date of the suspension was July 1, 2019. *See* Consolidated Finding of Fact # 8.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning June 30, 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.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 6, 2020**

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**  
**(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