

Review examiner credited employer's testimony that the claimant warehouse worker walked off-mid shift without explanation and never returned. Held claimant's separation was disqualifying as a quit under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0031 6772 96

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was separated from his position with the employer on July 12, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 30, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on October 2, 2019. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant was discharged, without engaging in deliberate misconduct in wilful disregard of the employer's interest, and without knowingly violating a reasonable and uniformly enforced rule or policy of the employer, and, thus, was entitled to benefits pursuant to G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to allow the employer an opportunity to present testimony and evidence. Only the employer attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 was discharged and eligible for benefits, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand show that he walked off the job without notice and without providing a reason.

Findings of Fact

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

1. The claimant worked as a Selector for the employer, a grocer, from 6/1/19 until 7/12/19 when he last performed work.
2. The claimant was hired to work part time, earning \$13.50 an hour.
3. The claimant left work on 7/12/19 before the end of his shift. The claimant was scheduled to work from 11:00 p.m. to 7:30 a.m. on 7/12/19. He left at approximately 6:00 a.m. The claimant did not notify a Supervisor that he was leaving before he left.
4. The claimant had two unfinished pallets of product before he left his equipment and quit.
5. It took about 45 minutes before the employer realized the claimant had walked off the job.
6. The claimant never returned to work. The employer attempted to contact the claimant to no avail. The employer was unable to leave a message for the claimant because his phone was not accepting voice messages.
7. The employer was shorthanded. The employer would have had work available for the claimant if he had not quit.
8. Prior to his leaving, the claimant never requested a leave of absence, or a transfer. He never raised any issues with his employment prior to leaving his job. The claimant had not received any discipline before he left.
9. The employer reviewed video surveillance and witnessed the claimant leaving the building through the employee breakroom never to return.
10. On 7/16/19, the employer entered the claimant's employment status as a voluntary quit. (Remand Exhibit 5, page 2)

Credibility Assessment:

In the absence of any further testimony from the claimant, the employer's testimony and documentary evidence is deemed more credible.

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 and deems them to be supported by substantial and credible evidence.

Initially, the review examiner found that the claimant was discharged by telephone on July 11, 2019. Based solely on the claimant's testimony at the initial hearing, the review examiner credited his testimony that he had been discharged without explanation by his supervisor. The review examiner awarded benefits after analyzing the claimant's separation under G.L. c. 151A, § 25(e)(2). After remanding the case to take the employer's testimony, we now conclude that the claimant's separation is more appropriately analyzed as a resignation under different provisions of the law.

Specifically, G.L. c. 151A, § 25(e), 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, . . . An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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.

It is the claimant's burden to establish that his separation was for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

After remand, the review examiner found that the claimant was not discharged but, rather, walked out before the end of his shift on July 12, 2019, without contacting the employer again. The employer did not realize that the claimant had walked off the job until about 45 minutes after he left. The employer reviewed surveillance video and saw the claimant leaving the premises through the employee break room and further observed that he had left behind two pallets of unfinished work. The review examiner found that, although the employer attempted to contact the claimant, it could not leave a message because his phone did not accept voicemail, and the claimant never called the employer again. The review examiner further found the claimant had never requested a leave of absence or a transfer, and had not raised any issues regarding his employment before he left.

Although the parties disputed the nature of the claimant's separation, the review examiner explicitly found that the claimant quit by walking off the job. To support her findings, the review examiner made a credibility assessment accepting the employer's version of events regarding the nature of the claimant's separation. Such assessments are within the scope of the fact finder's role and unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996). Although the credibility assessment could have been more specific as to why the employer's evidence was deemed to be more credible, we believe it is reasonable in relation to the evidence presented.

Since the claimant contended that he was discharged, there is no evidence showing that he became separated for good cause attributable to the employer, for urgent, compelling, and necessitous reasons, or that he made reasonable efforts to preserve his job before quitting.

We, therefore, conclude as a matter of law that the claimant was separated without good cause attributable to the employer, and he is disqualified pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending July 13, 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 17, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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