

Where the claimant lost his license following an arrest and conviction for OUI, and the employer ultimately let him go when he realized the claimant would not have his license reinstated any time soon, the claimant is deemed to have caused his own unemployment and eligibility for benefits is analyzed as a resignation. However, he has shown that the underlying incident was attributable to his inability to control the disease of alcoholism. Held the claimant's separation was due to urgent, compelling, and necessitous circumstances and he is eligible for benefits.

**Board of Review
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Issue ID: 0031 8025 50

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 affirm.

The claimant was discharged from his position with the employer on August 1, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 24, 2019. The claimant 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 awarded benefits in a decision rendered on September 27, 2019. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant's separation was involuntary due to urgent, compelling, and necessitous circumstances and, thus, he was not 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 employer's appeal, we remanded the case to the review examiner to obtain additional evidence about the claimant's efforts to address his alcoholism and the circumstances that caused him to lose his 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 original decision, which awarded benefits under the urgent, compelling, and necessitous clause of G.L. c. 151A, § 25(e), because the claimant's loss of employment was due to alcoholism that he has made efforts to control, 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 as a full-time driver and maintenance person for the employer, an auto body shop, between January 8, 2015, and August 1, 2019, when he separated.
2. The claimant's direct supervisor was the Owner.
3. The claimant was required to maintain a valid driver's license for his position. The claimant was aware of this requirement.
4. The claimant is an alcoholic.
5. The claimant has been voluntarily attending alcoholic anonymous meetings (AA), 2–3 times per week since 2006.
6. In March, 2014, the claimant was arrested for Operating Under the Influence (OUI) and charged with OUI 1st offense. In March, 2014, the claimant was placed on probation for 1 year, his license was suspended for 45 days, and he was ordered to complete a 16-week outpatient alcohol program.
7. The claimant continued to voluntarily attend AA meetings after his arrest. The claimant attended AA meetings 3–4 times per week.
8. The claimant has two adult children who are suffering from an opiate addiction. Both children have a history of overdoses and one child has suicidal tendencies.
9. The claimant has been voluntarily doing his best to abstain from alcohol since his first arrest for OUI.
10. Prior to the end of December, 2017, the claimant was sober for approximately 7–8 months.
11. In the end of December, 2017, the claimant relapsed and began drinking again. The claimant relapsed due to family issues he was having and the distress he was experiencing with his children suffering from an opiate addiction and suicidal tendencies.
12. On January 20, 2018, the claimant was arrested and charged with OUI 2nd offense and negligent operation of a motor vehicle.
13. On January 20, 2018, the claimant's license was suspended for 3 years for refusing to take the breathalyzer test.

14. The claimant informed the Owner that he lost his license on the day that it happened. The employer allowed the claimant to continue working his maintenance duties while the claimant tried to get his license reinstated.
15. On March 11, 2019, the [sic] accepted a plea deal on the charge of negligent operation. The claimant was placed on probation for 1 year and the charge of negligent operation was continued without a finding.
16. On March 11, 2019, the claimant had a bench trial and was found guilty on the charge of OUI 2nd offense. The claimant was sentenced to 60 days in jail, which was suspended for 1 year. The claimant was placed on probation for 1 year, ordered to complete a 14-day inpatient program and his license was suspended for 2 additional years.
17. From June 15, 2019 through June 30, 2019, the claimant attended a court ordered inpatient program.
18. The Owner checked in with the claimant occasionally after the claimant's second arrest, asking the claimant the status of the license. The Owner was hoping the claimant's license would be reinstated so the claimant could return to his driving duties. After 1 ½ years, the claimant still did not have his license reinstated and was unsure when or if it would be reinstated.
19. On August 1, 2019, the Owner decided that he could no longer wait for the claimant to get his license back and needed to hire another driver.
20. On August 1, 2019, the Owner discharged the claimant for losing his driver's license.
21. The claimant has continued to address his alcoholism since his 2018 arrest. Since his 2018 arrest, the claimant continues to voluntarily attend AA meetings 2–3 times a week. The claimant completed a 14-day court ordered inpatient program. For approximately 26 weeks, the claimant has been attending a court ordered 52-week outpatient program where he participates in group therapy every Tuesday for 1 ½ hours.

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 also agree with the decision to award benefits, but we do so pursuant to a more narrow legal analysis.

The consolidated findings state that the claimant was discharged from his job with the employer. Ordinarily, a claimant's eligibility for unemployment benefits following a termination is analyzed under G.L. c. 151A, § 25(e)(2). However, the Supreme Judicial Court (SJC) has stated, "a person who causes the statutory impediment that bars his employment leaves his employment 'voluntarily' within the meaning of [G.L. c. 151A,] § 25(e)(1) when the employer realizes the impediment and terminates the employment." Rivard v. Dir. of Division of Employment Security, 387 Mass. 528, 529 (1982).

In the present case, a valid driver's license was a term and condition of the claimant's employment. *See* Consolidated Finding # 3. The claimant lost his license for five years after refusing a breathalyzer test in January of 2018, and subsequently being convicted of OUI 2nd offense in March, 2019. *See* Consolidated Findings ## 13 and 16. Ultimately, this suspension of his driver's license caused him to lose his job when the employer realized that the claimant's license would not be reinstated any time soon, if at all. *See* Consolidated Findings ## 18–20. Because the claimant's actions caused the statutory impediment to continued employment, (*i.e.*, loss of his driver's license,) we believe the review examiner appropriately analyzed the claimant's separation under G.L. c. 151A, § 25(e)(1). *See also Olmeda v. Dir. of Division of Employment Security*, 394 Mass. 1002 (1985) (rescript opinion) (claimant, who lost his job when he was unable to get to work because his driver's license was suspended following a conviction for driving while intoxicated, is disqualified under G.L. c. 151A, § 25(e)(1)).

Thus, this case is properly analyzed 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.

In order to evaluate whether the separation was for good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Nothing in the record suggests that the employer acted unreasonably. In fact, it exercised considerable patience in allowing the claimant a year and a half to try to get his driver's license back. Therefore, we conclude that the claimant's separation was not for good cause attributable to the employer.

We next consider whether the review examiner appropriately determined that the separation was due to urgent, compelling, and necessitous circumstances. "[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). Medical conditions are recognized as one such reason. *See Dohoney v. Dir. of Division of Employment Security*, 377 Mass. 333, 335–336 (1979).

The medical condition in this case is alcoholism. *See* Consolidated Finding # 4. Because the review examiner found that losing the claimant's job was attributable to his alcoholism, and because the claimant has been making efforts to maintain sobriety, she concluded that his separation was involuntary due to urgent, compelling, and necessitous reasons. However, the findings in her original decision pertained to the claimant's *recent* efforts to maintain sobriety.¹ Where a separation is caused by alcoholism, the SJC directs us to focus on the claimant's circumstances *at the time* of the incident that caused him to lose his job, and whether, at the time, he "had control of his alcoholism or . . . he deliberately and willfully refused to accept help in controlling it." Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737, 740 (1987). *See* Board of Review Decision 0026 2284 78 (Mar. 28, 2019) (held claimant who lost his license for not taking a breathalyzer test separated voluntarily, as he did not show that he was trying to control his alcoholism at the time of the incident that caused him to lose his job). We remanded in order to obtain facts about the claimant's alcoholism and any efforts to control it *before* the January, 2018, arrest that triggered his loss of license.

After remand, the consolidated findings show that the claimant had been struggling to control his alcoholism for a long time before the January, 2018, incident that led to his separation. He has attended Alcoholic Anonymous (AA) meetings two to four times a week since 2006, and completed a court-ordered 16-week outpatient alcohol treatment program in 2014. *See* Consolidated Findings ## 5, 6, and 7. He had been sober for about seven to eight months until December, 2017, when he relapsed because his children were struggling with drug addiction and suicidal tendencies. *See* Consolidated Findings ## 10 and 11. On this record, we are satisfied that, at the time of the incident that caused his loss of license and ultimately his job, the claimant was aware of his alcoholism but was not successful in controlling the disease. He lost his job due to circumstances that were beyond his control.

We, therefore, conclude as a matter of law that the claimant separated from employment involuntarily due to urgent, compelling, and necessitous circumstances within the meaning of G.L. c. 151A, § 25(e).

¹ *See* Finding of Fact # 8 in the original hearing decision, entered into the record as Remand Exhibit 1.

Accordingly, the review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning July 28, 2019, and for subsequent weeks if otherwise eligible. Pursuant to G.L. c. 151A, § 14(d), benefits paid to the claimant shall not be charged to the employer's account, but shall be charged to the solvency account.

BOSTON, MASSACHUSETTS
DATE OF DECISION – February 4, 2020



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.

AB/rh