

**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: 0032 1979 63

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 the claimant benefits following his separation from employment on September 8, 2019. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm the decision under a different section of law.

On May 15, 2020, the agency initially determined that the claimant was entitled to unemployment benefits. The employer appealed and both parties participated in the hearing. In a decision rendered on October 31, 2020, the review examiner affirmed the agency determination, concluding that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest, or knowingly violate a reasonable and uniformly enforced rule or policy of the employer, and, thus, he was not disqualified under G.L. c. 151A, § 25(e)(2). The Board accepted the employer's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we conclude that the review examiner's original decision to award benefits is based on substantial evidence. However, in our view, the decision was decided under the incorrect section of law, and this error has affected the employer's substantive rights. The review examiner analyzed the claimant's separation under G.L. c. 151A, § 25(e)(2), and concluded that the separation was the result of a lack of work. We disagree with this analysis. The totality of the evidence in the record establishes that the claimant was unable to work due to an illness, and the employer eventually filled his position, because it could not hold it open indefinitely. Accordingly, the claimant's separation from work was solely the result of his medical condition, and his qualification for benefits should, therefore, be analyzed under G.L. c. 151A, § 25(e). Based on the record before us, we conclude as a matter of law, that the claimant's separation from work was qualifying, as he left work for urgent, compelling, and necessitous reasons, as meant under G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week ending September 21, 2019, and for subsequent weeks, if otherwise eligible. Charges from the employer's account should be removed consistent with G.L. c. 151A, § 14(d)(3).



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 23, 2020



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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

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.

SVL/rh