

Where the review examiner credited the employer's testimony that the owner's alleged demeaning behavior did not occur, the claimant has not met his burden of showing he left for good cause attributable to the employer. While the claimant may have had mental health issues, the claimant failed to demonstrate that he left for urgent, compelling, and necessitous reasons.

**Board of Review
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Issue ID: 0032 7575 29

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 separated from his position with the employer on or about October 16, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 11, 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 May 12, 2020. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left his employment for good cause attributable to the employer and, thus, 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 allow the employer an opportunity to provide testimony and other evidence. Only the employer 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, which concluded that the claimant voluntarily left his employment for good cause attributable to the employer, 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 and credibility assessment are set forth below in their entirety:

1. On September 24, 2018, the claimant was initially hired to work full-time for the employer, a masonry restoration company, as a masonry restoration technician. The claimant was paid \$17.00 per hour.
2. The claimant's employment was subject to a 90-day probationary period, at which time a performance review and pay increase was to occur.
3. The claimant and his wife were scheduled to close on a home purchase in January, 2019. The claimant was allowed, prior to the home closing in January, 2019, to work on the home. The claimant's wife wanted the claimant to work on the home.
4. On December 18, 2018, the claimant left his employment to work on the home.
5. The owner liked the claimant and on September 9, 2019, rehired the claimant.
6. On September 23, 2019, the owner gave the claimant a \$1.00 per hour pay increase and indicated the claimant had to complete a new 90-day probationary period.
7. After the pay increase, the claimant texted the owner, in what the employer described as a "riddle", stating people working for Dunkin Donuts made more money than him.
8. The owner had heard from his employees the claimant had issues.
9. On October 10, 2019, the claimant did not call out or report for work.
10. The employer called the claimant and left a message for the claimant to call him. The claimant did not respond.
11. The employer called the claimant again but did not leave a message when the claimant did not answer.
12. The claimant did not contact the employer until on or about October 16, 2019, when he called the Program Manager to tell him he was quitting his job. The claimant did not tell the Program Manager why he was quitting.
13. On or about October 16, 2019, the claimant quit his job.
14. At no time since the date of rehire, through on or about October 16, 2019, the date the claimant quit, did the owner in front of the claimant's coworkers, in an aggressive manner, call the claimant a "pussy" for texting him rather than calling him about his issues.

15. On October 24, 2019, the claimant texted the owner stating the owner was a “fucking douche stinky cunt”; “this is [Claimant] the crazy kid that will murder everybody there;” and “don’t fuck with me.”
16. The claimant has been diagnosed as bi-polar manic depressive.
17. The claimant had been experiencing deterioration in his mental health.
18. The claimant did not request a leave of absence to address any health issues.
19. The claimant was not advised by a physician to leave his employment for health reasons.
20. The claimant was not subject to any disciplinary action at the time of separation.
21. Work was available for the claimant at the time of separation.
22. About two weeks after the claimant left his employment, he was hospitalized for a couple of days and his medications were later changed by his physician.

Credibility Assessment:

The claimant testified at the initial hearing that the owner, in front of the claimant’s coworkers, in an aggressive manner, called him a “pussy” for texting him rather than calling him about his issues. It is unreasonable to believe the owner, who liked the claimant, rehired him, and gave him a pay raise, would speak to the claimant in such a manner in front of coworkers or at all. The owner’s testimony that at no time did he call the claimant a “pussy” for texting rather than calling him about his issues is deemed 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 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. We further believe that the review examiner’s credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner’s legal conclusion. Rather, we believe that the review examiner’s consolidated findings of fact support the conclusion that the claimant voluntarily left his employment without good cause attributable to the employer or for urgent, compelling and necessitous reasons.

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 . . . [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 bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

Under the good cause standard, 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). In this case, the claimant contended that he left work specifically because of an incident in which the owner called him a "pussy" and embarrassed him in front of coworkers. However, after remand and the benefit of the owner's testimony, the review examiner explicitly concluded that this did not occur. While the application of law to fact is entrusted to the Board of Review, "[t]he review examiner bears '[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .'" Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). Even if we were to reach a different conclusion, we must accept the review examiner's consolidated findings, because they are reasonable in relation to the evidence presented at the hearing. Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463 (1979) ("[I]nquiry by the board of review into questions of fact, in cases in which it does not conduct an evidentiary hearing, is limited by statute . . . to determining whether the review examiner's findings are supported by substantial evidence."). Where the review examiner reasonably found that the claimant's alleged "good cause" reason for leaving work did not in fact occur, we cannot conclude that the claimant voluntarily left his employment for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1).

At the initial hearing, the claimant suggested that personal reasons contributed to his decision to leave work. Under the urgent, compelling, and necessitous standard, we must examine the circumstances in each case, and evaluate "the strength and effect of the compulsive pressure of external and objective forces" on the claimant to ascertain whether the claimant "acted reasonably, based on pressing circumstances, in leaving employment." Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 848, 851 (1992).

While the claimant never presented any medical documentation and never alleged that a healthcare provider advised him to resign, the claimant testified about his bipolar disorder, inconsistently alleged that the employer failed to allow him to take time off work to address his mental health, and alluded to a hospitalization around the time of his separation from work. However, the consolidated findings of fact indicate that the employer was never explicitly made aware of the claimant's mental health issues, the claimant never requested a leave of absence, and the claimant's hospitalization did not occur until two weeks after his separation from employment. Once again, these findings are reasonable, as they are supported by the record. In short, the claimant has not met his burden of showing that urgent, compelling, and necessitous personal issues forced him to involuntarily leave his employment pursuant to G.L. c. 151A, § 25(e).

We, therefore, conclude as a matter of law, pursuant to G.L. c. 151A, § 25(e)(1), that the claimant voluntarily left his employment without good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

The review examiner's decision is reversed. The claimant is denied benefits for the week ending October 19, 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 - July 17, 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
(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.

JRK/rh