

**The claimant failed to respond to remand questions seeking documentation of his alleged hospitalization, and new evidence showed that he was instead walking through town at the time he was supposed to report to work. Held he abandoned his job and is ineligible for benefits under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
19 Staniford St.  
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 7958 14**

### 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 September 27, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 13, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner reversed the agency's initial determination and awarded benefits in a decision rendered on January 23, 2020. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment due to urgent, compelling, and necessitous reasons, 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 supporting documentation about the claimant's alleged hospitalizations and evidence about his efforts to preserve his job. 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.

### 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 part-time for the employer, a diner, as a prep cook, from May 8, 2019, until September 27, 2019. The claimant was paid \$15.00 per hour.
2. The claimant is an admitted alcoholic.
3. The claimant lived in a sober house in [Town A], Massachusetts.

4. On September 26, 2019, the claimant was scheduled to work 6:00 a.m. to 12:00 noon.
5. On September 26, 2019, at about 10:45 a.m., the claimant received a call from the sober house. The claimant left work to address an issue at the sober house which involved neatness and theft.
6. On September 26, 2019, at 6:15 p.m., the employer emailed the claimant and requested he call the employer as soon as possible. At 6:28 p.m., the claimant responded he did not know how to tell the employer what was bothering him. The employer responded asking if the claimant was alright. (Exhibit 7)
7. On September 27, 2019, at 4:19 a.m., the claimant emailed the employer stating he would be late and in at about 9:00 a.m. and at 8:43 a.m., again emailed the employer: "I'm still at the hospital ...be there as soon as." (Exhibit 7)
8. On September 27, 2019, the claimant did not report for work.
9. On September 27, 2019, at about 9:30 a.m., a customer (Customer A) of the employer saw the claimant walking on the sidewalk near the town library carrying a bag. (Remand Exhibit 3, Page 5)
10. On September 27, 2019, at about 9:30 a.m., the claimant was walking on the sidewalk near the town library carrying a bag.
11. On September 27, 2019, the claimant was not in a medical facility.
12. The Payroll Manager has known Customer A for about 3 years.
13. The employer did not receive a letter from the claimant.
14. The claimant did not request a leave of absence.
15. A leave of absence was available to the claimant as the employer's witness, the Payroll Manager, the mother of the owner, would have substituted for the claimant during his absence.

Credibility Assessment:

At the initial hearing the claimant testified, in part:

- (1) On September 26, 2019, he relapsed and consumed alcohol due to a confrontation with another sober house tenant; (2) he was transported to a hospital; (3) on September 27, 2019, he was transported from the hospital to an inpatient alcohol treatment/detoxification facility in [Town B], Massachusetts and was unable to have a cell phone or use of a computer or other telephone to communicate

with anyone; (4) he was only allowed to write letters the week following his admission; (5) he wrote a letter to the employer writing the employer's name on the envelope; (6) his counselor was to find and write the employer's address in [Town A], Massachusetts and mail the letter; (7) his counselor told him his letter was mailed; and (8) he was discharged from the inpatient alcohol treatment/detoxification facility and secured housing at a halfway house in [Town B], Massachusetts.

The claimant did not attend the remand hearing. No medical documentation, as requested by the Board Remand Order, was presented to substantiate his assertion he was hospitalized on September 26, 2019 or September 27, 2019 or that he was in a treatment facility from September 27, 2019 through November 20, 2019. The employer presented a notarized statement from Customer A which stated on September 27, 2019, at about 9:30 a.m., he saw the claimant walking on the sidewalk near the town library carrying a bag. Customer A had been a patron of the employer for at least three years. It is reasonable to believe Customer A would recognize the claimant having been a patron of the employer for the entire period of the claimant's employment. Customer A's notarized statement, though hearsay, that he saw the claimant on September 27, 2019, at about 9:30 a.m. walking on the sidewalk near the town library carrying a bag, is deemed credible. The claimant's testimony he was hospitalized on September 26, 2019 and on September 27, 2019, was transferred from the hospital to a rehabilitation facility is not 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 believe that the consolidated findings after remand no longer support an award of unemployment benefits.

The first question is whether the claimant's separation from employment was voluntary or involuntary. In his original decision, the review examiner concluded it was involuntary. He found that the claimant was hospitalized on September 26, 2019, then transferred to a residential treatment facility and unable to report for work on September 27, 2019, or to communicate with the employer. On this basis, he concluded that the claimant separated involuntarily due to urgent, compelling, and necessitous circumstances under G.L. c. 151A, § 25(e). "[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).

Because the employer's appeal raised a question as to whether or not the claimant was actually in the hospital on September 27, 2019, we remanded for the claimant to produce some type of supporting medical documentation.

In response to our remand order, the claimant neither submitted medical documentation nor participated in the remand hearing. Consequently, the consolidated findings of fact are now much different from the original findings. They provide that, instead of being in the hospital or en route to a treatment facility on September 27, 2019, the claimant was seen by a regular customer walking along the street near the public library at the time he was supposed to have been at work. *See Consolidated Findings ## 4, 7–11*. Thus, there is insufficient evidence to support his failure to work due to medical reasons.

There is no question that the claimant stopped reporting to work after September 26, 2019. Because the claimant has not presented any other evidence to indicate why, the presumption is that he simply abandoned his job. Olechnicky v. Dir. of Division of Employment Security, 325 Mass. 660, 661 (1950) (upholding the Board of Review's conclusion that the failure of an employee to notify his employer of the reason for absence is tantamount to a voluntary leaving of employment within the meaning of G.L. c. 151A, § 25(e)(1)).

Thus, we must decide whether he is eligible for benefits under G.L. c. 151A, § 25(e)(1), which provides, in relevant 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 . . . .

The express language of this statutory provision assigns the burden of proof to the claimant.

In determining 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). We see nothing in the consolidated findings that indicates that the employer acted unreasonably. Because the claimant had to leave suddenly in the middle of his shift on September 26, 2019, the employer merely emailed the claimant to contact them right away and then inquired if he was okay. *See Consolidated Finding # 6*. Such inquiries do not constitute good cause attributable to the employer to abandon a job.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he separated for good cause attributable to the employer or for urgent, compelling, and necessitous circumstances. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning September 22, 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.

**BOSTON, MASSACHUSETTS**

Fitzgerald, Esq.

**DATE OF DECISION - April 14, 2020**

Chairman



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 ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until May 4, 2020<sup>1</sup>. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day 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.

AB/rh

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<sup>1</sup> See Supreme Judicial Court's Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (CORONAVIRUS) Pandemic, dated 4-1-20.