

Although the claimant contended he was discharged, the record establishes that he walked off the job after refusing to perform his regular job duties. The claimant did not meet his burden to show that he left for good cause attributable to the employer or urgent, compelling, and necessitous circumstances, and is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0038 3185 45

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 and filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 12, 2020. 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 February 3, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the employer failed to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under 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 afford the employer an opportunity to testify. 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 decision, which concluded that the claimant was discharged for unknown reasons, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand provide that the claimant left work after refusing to complete his job duties.

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 chromator for the employer, a metal finishing business, from 2/5/2016 until 3/25/2020.
2. The claimant worked full-time, Monday through Friday, from 7:00 a.m. to 3:30 p.m.
3. The claimant's immediate supervisor was the supervisor (the Supervisor).
4. Throughout the claimant's employment, the employer had a standing monthly job that the employees, including the claimant, did not like to complete because it was repetitive, and the equipment required was heavy.
5. On an unknown date, the vice president (the VP) took the employees' complaints into consideration and created teams to complete the job.
6. Each month, one employee "racked" the pieces, getting them ready for the chromators, the claimant and a second chromator plated the pieces, and a fourth employee dried the pieces.
7. On 3/25/2020, when the claimant arrived at work, his team had started the monthly job.
8. After viewing the pieces in the chemical tank, the claimant asked the VP why two other employees could not plate the parts for the monthly job.
9. The VP told the claimant the other employees were not chromators, that he was a chromator and the employer paid him to plate the pieces.
10. The VP told the claimant if he did not want to complete the job, he could take off his personal protective equipment, punch out and leave. He told the claimant if he left, not to return.
11. The claimant told the VP he was going to punch out, go home and go to the unemployment office.
12. The claimant punched out and left.
13. The claimant texted the employer's owner and asked him to call him back. The owner did not respond to the claimant's text message.
14. The claimant quit his job on 3/25/2020 when he left work after refusing to complete his job duties.

Credibility Assessment:

The claimant testified at the original hearing that when he asked about who was working on the pieces in the chemicals, the VP immediately discharged him without

reason. At the original hearing, the claimant also testified that he asked the VP what pieces he was supposed to work on that day. At the remand hearing, the claimant admitted that he worked on the monthly job and knew what pieces were required for it. Initially at the remand hearing, he testified that the pieces in the tank when he arrived were not for the monthly job, but then changed his testimony admitting that the pieces in the tank were for the monthly job. Therefore, since he had worked on the same job each month, he knew or should have known his job for the day, discrediting his testimony that he needed to know his job for the day.

The employer offered detailed testimony about the monthly job requirements and provided documentation showing how often the job was completed. The VP also testified, and the claimant agreed, that the monthly job was one that the employees complained often complained about, but he changed how the job was completed to assist the employees. He also provided the timecards for claimant's coworkers to corroborate his testimony that they were already at work and had started on the monthly job when the claimant arrived at work.

Although the VP may have given the claimant an ultimatum, do his job or leave, the claimant chose to leave, thereby causing his own separation.

As the employer provided detailed, consistent testimony with documentary evidence, the totality of the employer's testimony outweighs the claimant's testimony given in the original and remand hearings. Therefore, the employer 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 original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact, except Consolidated Finding #14, to the extent it contains a mixed question of fact and law. "Application of law to fact has long been a matter entrusted to the informed judgment of the board of review." Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463-464 (1979). In adopting the remaining findings, we deem 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 that the claimant is entitled to receive benefits.

Initially, the review examiner found that the claimant was discharged for unknown reasons on March 28, 2020. 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 remand, however, the review examiner found that the claimant was not discharged. Instead, the review examiner found that the claimant walked out before the end of his shift on March 25,

2020. Although the parties disputed the nature of the claimant's separation, the review examiner found that the claimant voluntarily left work after he refused to perform his job duties. *See Consolidated Findings ## 8 and 10–12.* 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). As noted earlier, we believe that the review examiner's assessment is reasonable in relation to the evidence presented.

Because we agree that the claimant initiated the separation and left his job voluntarily, his eligibility for benefits is properly analyzed pursuant to the following provisions under G.L. c. 151A, § 25(e), which provide, in pertinent part:

[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.

The express statutory language of these provisions places the burden of proof upon the claimant.

We next consider whether the claimant has presented good cause attributable to the employer or urgent, compelling, and necessitous reasons for leaving his job. Since the claimant contended that he was discharged, there is scant evidence to show that he left for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

To establish good cause, the claimant must show that the employer acted unreasonably. *See 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. The review examiner noted in her credibility assessment that the vice president told the claimant that he had a choice to perform his job duties or punch out and leave. *See Consolidated Finding # 10.* Although the vice president's statement can be interpreted as an ultimatum, we see nothing inherently problematic with it, especially because it was reasonable for the employer to expect that the claimant would perform the work for which he was hired. The vice president explained that the claimant had a choice, and, in response, the claimant chose to punch out and leave. *See Consolidated Findings ## 11–12.* The claimant did not contend, and there is nothing in the record to show, that the employer had altered the claimant's job duties at any time or had otherwise unilaterally changed any terms and conditions of his employment. There is also nothing in the record to show that the employer had engaged in any other type of conduct that could constitute a good cause reason to separate from employment. Therefore, the claimant failed to establish that he left for good cause attributable to the employer.

We also believe the claimant has not met his burden to show urgent, compelling, and necessitous circumstances that caused him to walk off the job. Our standard for determining whether a claimant's reasons for leaving work are urgent, compelling, and necessitous has been set forth by the Supreme Judicial Court. 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). In this case, because the claimant was adamant that he was discharged, he failed to present evidence of any pressing or unusual circumstances that required him to leave his employment when he did.

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

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning March 29, 2020, 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 - January 9, 2024



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.

JMO/rh