

The employer's indefinite furlough of the claimant constituted a layoff because it could not offer work due to the COVID-19 public health emergency. The claimant was eligible for benefits upon this separation pursuant to G.L. c. 151A § 25(e)(2).

**Board of Review
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Issue ID: 0051 0006 32

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and we reverse.

The claimant separated from his position with the employer on April 13, 2020. He filed a claim for unemployment benefits with the DUA with an effective date of April 12, 2020, which was later approved in a determination issued on March 23, 2021. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the employer only, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on December 1, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment and, thus, was 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 claimant's appeal, we remanded the case to the review examiner to consider additional documents submitted to the Board on appeal. Only the claimant 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 voluntarily quit his position for personal reasons, 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 November 18, 2019, the claimant began working as a full-time (40 hours per week) professional services associate for the employer, a compensation management company, for \$42,500 per year.
2. The claimant worked in person at the employer's offices in Massachusetts.

3. While the claimant worked for the employer, he lived at an apartment in [City].
4. The claimant's direct supervisor was the employer's director of client services.
5. On Tuesday April 7, 2020, the employer issued the claimant a letter by email, informing him that the employer was furloughing him indefinitely effective April 13, 2020, as a "difficult business decision" caused by the COVID-19 pandemic.
6. The claimant last worked for this employer on Friday April 10, 2020.
7. The claimant was furloughed by the employer effective Monday, April 13, 2020, due to the COVID-19 pandemic.
8. The claimant's apartment lease in [City] expired on July 31, 2020.
9. The claimant chose not to renew his apartment lease in [City] because he had not been recalled to work and there was a lot of uncertainty regarding what the future would look like due to the then ongoing COVID-19 pandemic.
10. On August 1, 2020, the claimant moved back to his parents' home in Rhode Island.
11. On August 4, 2020, the claimant received, via email, a recall letter asking him to return to his position with the employer, effective August 10, 2020 (the recall date).
12. The claimant did not return to his job after the recall date because he had moved out of Massachusetts, and because he had decided to start school in Rhode Island.
13. The claimant started his classes at a university in Rhode Island on September 9, 2020.
14. The claimant did not receive any payments from the employer during his furlough period.

Credibility Assessment:

The employer's senior human resources (HR) manager participated in the first hearing held on November 30, 2022. The claimant did not attend the first hearing. The claimant and the claimant's attorney attended the remand hearing held on July 31, 2023. The employer did not attend the remand hearing. The employer's witness indicated that he did not have any information about the claimant's separation from employment apart from a general assertion that the claimant quit for personal reasons. The employer did not provide the claimant's resignation letter or any other

supporting document to prove that the claimant quit. On the other hand, the claimant offered detailed, forthcoming, and consistent testimony regarding his separation, testifying that the employer furloughed him effective April 13, 2020. The claimant provided the furlough notice and a recall letter from the employer, proving that the employer furloughed him. The claimant's testimony is credited as credible because it was detailed, consistent, and supported by documents submitted to the Department of Unemployment Assistance (DUA).

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 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 that the claimant is disqualified from receiving benefits.

The claimant was furloughed indefinitely from his employment on April 13, 2020, due to COVID-19. Consolidated Findings ## 5 and 7. He was not paid during the furlough period. Consolidated Finding # 14. He was not allowed to work for the employer, use his accrued vacation time, and was not informed as of when he was expected to return to work.¹ These circumstances indicate that this was an indefinite layoff. Where a claimant is laid off from employment, his separation is treated as a discharge, and his eligibility for benefits is governed by G.L. c. 151A, § 25(e)(2), which 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. . . .

“[T]he grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee's right to benefits, and the burdens of production and persuasion rest with the employer.” Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

At a minimum, to meet its burden under G.L. c. 151A, § 25(e)(2), the employer must show some sort of misconduct or rule violation that caused the separation. Here, there were no actions on the claimant's part to show he engaged in any misconduct or violated any rule or policy. Rather, the

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

employer initiated the separation because it could not offer work due to the COVID-19 public health emergency as of April 13, 2020. Thus, the claimant was eligible for benefits upon this separation.

We, therefore, conclude as a matter of law that the claimant was eligible for benefits pursuant to G.L. c. 151A § 25(e)(2).

The review examiner's decision is reversed. The claimant is eligible for benefits for the week beginning April 12, 2020, if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 25, 2023



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.

MR/rh