The claimant voluntarily quit his employment with a temporary help agency when, after being informed that the client had requested he be removed from an assignment, he called his recruiter a "fucking joke" and ceased communications with the employer. Since there was no evidence that the employer took any action to provoke the claimant, nor was there evidence of urgent, compelling, and necessitous circumstances, the claimant is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0063 3980 76

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 December 15, 2020. He filed a claim for unemployment benefits with the DUA, which was 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 only by the employer, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on October 12, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 employer had not met its burden to show that the claimant was discharged for a knowing violation or deliberate misconduct because the employer failed to provide any evidence regarding the final incident that led to the claimant's discharge, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant was employed as a full-time assembler for the employer, a temporary help firm, from 11/04/2020 until 12/15/2020 when he was discharged.

2. On 11/04/2020, the employer assigned the claimant to work for its client, a local manufacturer.

3. The employer expected the claimant to behave in a professional manner at work, to be respectful and not be aggressive towards other employees.

4. The purpose of the employer's expectation was to maintain a safe workplace for the employees and for the clients.

5. The employer provided the claimant with a copy of the employee handbook that contained the expectation during the hiring process, and he read and signed the policy acknowledgement on 11/02/2020.

6. On 12/15/2020, the client emailed the employer stating there were a "few behavior expectation problems" and the claimant was "a bit aggressive with a few employees". The client asked in the email that the claimant be called by the employer around 3:45 p.m. to remove him from the assignment because his shift ended at 3:30 p.m. and he would be off the premises at that time.

7. The client discharged the claimant for alleged aggressive and threatened behavior towards other employees while at work.

8. It was unknown what the final incident was that caused the claimant to be discharged from his job on 12/15/2020.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is entitled to benefits.

The review examiner rendered her decision based upon the provisions of G.L. c. 151A, § 25(e)(2), which states, 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 . . . .

While we agree that the claimant separated from his employment on December 15, 2020, we believe the review examiner erred in analyzing the claimant's eligibility for benefits under this provision of the law.

The review examiner concluded that the claimant had been discharged because the employer's client had prematurely ended the claimant's assignment following reports that the claimant engaged in aggressive and threatening behavior while at the client's worksite. Findings of Fact ## 6 and 7. However, the client and employer are two distinct entities and the client's decision to part ways with the claimant is not evidence that the employer severed the employment relationship with the claimant. While the employer may have had concerns about the allegations about the claimant's behavior, there is no indication from the record that the employer had decided to discharge the claimant on or before December 15, 2020.

When the employer's recruiter called the claimant on December 15th and informed him that his assignment with the client had ended, the claimant responded by calling the recruiter a "fucking joke" and hanging up the phone. The claimant did not seek any further communications with the employer after he ended that call.[1] Based on this evidence, we believe the record shows that the claimant severed the employment relationship by refusing further communications with the employer.

As the record demonstrates that the claimant's actions severed the employment relationship, his eligibility for benefits is properly analyzed under the provisions of G.L. c. 151A, § 25(e), 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 (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.[2]

The express language of the statute places the burden of proof upon the claimant.

There was no indication from the record that the employer took any action to provoke the claimant's actions on and after the December 15th call. Further, there is no evidence suggesting

[1] The employer's uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

[2] The record also indicates that the claimant's separation would be deemed to be a voluntary resignation pursuant to a separate provision under G.L. c. 151A, § 25(e), which requires the claimant to contact his employer, a temporary help firm, for reassignment prior to filing for benefits.

that circumstances of an urgent, compelling, and necessitous nature forced the claimant to end the December 15th call and cease further communications with the employer.

We, therefore, conclude as a matter of law that the claimant quit voluntarily without good cause attributable to the employer or urgent, compelling, and necessitous reasons.

The review examiner's decision is reversed. The claimant is denied benefits for the week of December 27, 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 - December 15, 2022

Paul T. Fitzgerald, Esq.
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 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.

LSW/rh