

The review examiner reasonably rejected the claimant's testimony that he was let go for a lack of work and concluded that the claimant resigned. Because the claimant refused to provide evidence of why his license was suspended or explain any efforts he took to try to get his license reinstated, he did not show he resigned for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e)(1). However, as his job with the employer was part-time employment and he separated from this job during his benefit year, he is only subject to a constructive deduction.

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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 affirm in part and reverse in part.

The claimant separated from his position with the employer on April 10, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on October 1, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on November 18, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons 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 obtain additional evidence pertaining to the circumstances surrounding the claimant's separation. Only the claimant 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 had not shown urgent, compelling, and necessitous reasons for resigning after his license was suspended and he was unable to get to work, 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. The claimant filed a claim for unemployment benefits effective April 12, 2020.
2. The claimant was employed at a catering company in [City], Massachusetts, as a part-time dishwasher/utility kitchen worker, from November 2020 until April 10, 2021.
3. The claimant worked 20-25 hours a week at a pay rate of \$17.75 an hour.
4. On or about April 10, 2021, the claimant informed the employer that his driver's license was suspended, and he would not be able to get to work.
5. It is not known when or why the claimant's license was suspended.
6. The claimant did not perform work at the employer's [City] location after his license was suspended.
7. It is unknown how the claimant became aware that his license was suspended, nor what steps the claimant took to reinstate his license.
8. The claimant did not request a leave of absence while he resolved the issue with his license, nor request a transfer to another location.
9. The claimant did not take any other steps to preserve his employment.
10. In a fact-finding questionnaire submitted to the Department of Unemployment Assistance (DUA), in response to a question asking him why he no longer worked for the employer, the claimant wrote, "Personal issue. Will be back once I deal with issue. Personal."
11. In a fact-finding questionnaire submitted to the DUA, the employer wrote, "The claimant resigned due to personal issues. The claimant had his license suspended and was unable to get to work."
12. The claimant quit his position because he lost his license and was unable to get to his place of work.
13. As of January 25, 2023, the claimant's license has not been reinstated.

Credibility Assessment:

During the remand hearing, the claimant declined to answer any questions relating to the suspension of his license, stating instead, "it's none of your business." The claimant did acknowledge that the license was yet to be reinstated, but it was "none of the Board [of Review]'s business."

The claimant testified that he had been told by his supervisor that the employer had lost a contract and there was no work for him. However, in the fact-finding questionnaire completed by the claimant he stated that he left work because he had personal issues to deal with, while the employer's questionnaire stated that the claimant said he could not get to work because of his license issues. The claimant in his testimony denied resigning but could not provide a reason why he had said so in the questionnaire.

The claimant said that he was told about the lack of work while he was at the Registry of Motor Vehicles dealing with his license situation. Although the claimant refused to answer questions specifically about his license, he did give testimony about going to the Registry. The claimant said he discovered his license was suspended via a letter from the Registry a few days before he visited, and he showed it to the employer in order to take a personal day. However, the claimant also said that he had not gone to work after the license was suspended and further that the license was not suspended until the day he was at the registry. The claimant additionally testified that he became aware of license issues when his car was towed but could not say when that occurred. The claimant's reluctance to provide specifics about his license issues, and the lack of clarity about when and how the claimant found out his license was suspended raise doubts about the credibility of his testimony. The claimant did not provide any tangible or credible evidence that he was laid off for lack of work and declined to provide any details regarding his license suspension. In light of the above, it is concluded the claimant quit his job as a result of his suspended license.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 2 that states the claimant began working for the instant employer in November, 2020, as inconsistent with the evidence of record as well as tax and wage information submitted to the DUA. 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. While we believe that the review examiner's consolidated findings of fact support the conclusion that the claimant voluntarily quit his employment, we believe that the claimant is only subject to a constructive deduction based on his separation from the instant employer.

At both hearings, the claimant disputed the employer's contention that the claimant had resigned his employment after his license was suspended. Based upon an assessment of the timeline of events, internal inconsistencies in the evidence provided by the claimant, his responses to the fact-finding questionnaires, and his refusal to answer questions material to his eligibility for benefits, the review examiner rejected as not credible the claimant's testimony that he was laid off due to a lack of work. 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). Upon review of the record, we have accepted the review examiner’s credibility assessment as being supported by a reasonable view of the evidence.

As the claimant was found to have resigned his position with the employer, his eligibility for benefits is properly analyzed under G.L. c. 151A, §§ 25(e) and (e)(1), which provide, 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 of such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under the above provisions, it is the claimant’s burden to establish that he left his job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

The review examiner concluded the claimant had resigned his position with the instant employer because he was no longer able to commute to and from work after his license was suspended. Consolidated Finding # 12. As the claimant did not separate because of any decision made or action taken by employer, there is no basis to conclude that he separated for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1).

“[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). To make such a determination, 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, 412 Mass. at 848, 851.

The Board has recognized loss of transportation as an urgent, compelling, and necessitous reason for leaving employment, where claimants show this loss was a result of circumstances beyond their control and they had no reasonable alternatives available. *See e.g.*, Board of Review Decision 0033 0671 48 (June 28, 2019) (*citing* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–98. (1974)), *and* Board of Review Decision 0031 4295 21 (Jan. 29, 2019). In this case, the claimant lost transportation because his license was suspended. Consolidated Finding # 12. As he declined to provide evidence showing why his license was suspended and did not articulate what steps he has taken to get his license reinstated, we cannot conclude that the claimant has met his burden to show that external and objective forces compelled him to resign. Consolidated Findings ## 5 and 7.

Even if the claimant had carried his burden to show that these circumstances compelled him to resign, he must also show that he “had taken such ‘reasonable means to preserve [his] employment’ as would indicate the claimant’s ‘desire and willingness to continue [his] employment.’” Norfolk County Retirement System, 66 Mass. App. Ct. at 766, quoting Raytheon Co., 364 Mass. at 597–98. The claimant did not provide testimonial or other evidence of what efforts he made to get his license reinstated and did not otherwise show he took any steps to try to retain his job with the instant employer. Consolidated Findings ## 7–9. Accordingly, we cannot conclude the claimant took reasonable steps to preserve his employment before resigning.

However, inasmuch as this was part-time employment, the claimant may be subject to a constructive deduction rather than a complete disqualification from benefits in accordance with the provisions of 430 CMR 4.71–4.78.

A constructive deduction will be imposed if a disqualifying separation from part-time work occurs during the benefit year. The DUA regulation at 430 CMR 4.76 provides, in relevant part, as follows:

(1) A constructive deduction, as calculated under 430 CMR 4.78, from the otherwise payable weekly benefit amount, rather than complete disqualification from receiving unemployment insurance benefits, will be imposed on a claimant who separates from part-time work for any disqualifying reason under M.G.L. c. 151A, § 25(e), in any of the following circumstances:

(a) If the separation is: . . .

2. if the separation from part-time work occurs during the benefit year

The benefit year of the claimant’s 2020-01 claim for benefits ran from April 12, 2020, through April 10, 2021. Because the claimant separated from the instant employer on April 10, 2021, he separated during his benefit year. *See* Consolidated Finding # 2. He is subject to a constructive deduction in accordance with the above-referenced regulations.

A constructive deduction is defined as “the amount of remuneration that would have been deducted from the claimant’s weekly benefit amount . . . if the claimant had continued to be employed on a part-time basis.” 430 CMR 4.73. The amount of the constructive deduction each week is determined by the claimant’s earnings from the part-time employer. 430 CMR 4.78(1)(c) provides as follows:

On any separation from part-time work which is obtained after the establishment of a benefit year claim, the average part-time earnings will be computed by dividing the gross wages paid by the number of weeks worked.

Consolidated Finding # 2, wage information collected by the DUA, and information about the claimant’s employment supplied by the employer in Exhibits 5 and 8 show the claimant worked

for the instant employer for 7 weeks.¹ That same wage information shows that he earned a total of \$2,437.50 from the instant employer during that seven-week period. When that amount is divided by the seven weeks the claimant worked, it comes to \$348.21 per week. Therefore, in accordance with the provisions of 430 CMR 4.78(1), the claimant is subject to a constructive deduction of \$348.21.

We, therefore, conclude as a matter of law that the review examiner's conclusion that the claimant quit his job for disqualifying reasons under G.L. c. 151A, § 25(e)(1), is free from error of law. However, the conclusion that the claimant is subject to a total disqualification from receiving benefits was an error of law, and we reverse that conclusion. The claimant's benefits are subject to a constructive deduction.

The review examiner's decision is affirmed as to the separation issue under G.L. c. 151A, § 25(e)(1). However, we reverse the total disqualification from benefits. Beginning the week of April 11, 2021, the claimant shall be subject to a constructive deduction in the amount of \$348.21 each week, until he meets the requalifying provisions under 430 CMR 4.76(2) and (3).

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 14, 2023



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.

¹ Exhibits 5 and 8 are part of the unchallenged evidence introduced at the hearing and placed in the record and are 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).

LSW/rh