**After hearing both parties testify at separate hearings, the review examiner rendered a reasonable credibility assessment accepting that the claimant resigned because a coworker had made advances toward his girlfriend after hours at a bar. Held the claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because he did not show that he resigned for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances.**

**Board of Review**
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**Issue ID: 0072 4342 39**

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 resigned from his position with the employer on August 14, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on October 16, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on October 21, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had been discharged without having engaged in deliberate misconduct in wilful disregard of the employer's interest or having knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, he 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 obtain further evidence from the employer about the claimant's separation. Only the employer 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 had been fired from his job, is supported by substantial and credible evidence and is free from error of law in light of the consolidated findings, which now show that the claimant had initiated his own separation from employment due to a coworker's behavior at a bar.

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 full-time service technician for the employer, a windows and doors installation company, beginning in April 2021 until August 14, 2021, when he separated.

2. The claimant worked Monday through Friday from 7:00 a.m. until 3:30 p.m., earning $20.00 per hour.

3. The claimant's immediate supervisor was the service manager (supervisor).

4. The claimant was assigned a company van during his employment.

5. On August 14, 2021, the claimant, the claimant's girlfriend (girlfriend), and another employee (employee A) were at a bar together.

6. On August 14, 2021, the claimant became upset after employee A made an unwelcomed advance of a sexual nature towards the girlfriend.

7. On August 14, 2021, the claimant sent an email to the supervisor informing her that he was resigning because of what employee A had done. The claimant told the supervisor that he would be returning the employer's van.

8. On August 14, 2021, the employer's GPS recorded the claimant driving around all night in the van.

9. The claimant was not discharged for driving around in the van on August 14, 2021.

10. On August 14, 2021, the claimant did not retract his resignation to the supervisor.

11. On August 14, 2021, the supervisor did not tell the claimant that he should go seek medical help for his mental health and that the claimant was all set.

12. The claimant was admitted to [sic] hospital on August 14, 2021, for psychiatric evaluation. The claimant was discharged from the hospital on August 14, 2021.

13. The claimant was again hospitalized on August 16, 2021, for mental health issues. The claimant was discharged from the hospital on August 17, 2021.

14. The claimant's hospital record shows that he was hospitalized on August 14, 2021, and [sic] 16, 2021.

15. On August 17, 2021, the employer's general manager (GM) sent a letter to the claimant informing him that the employer had accepted his resignation. The claimant was also given his last paycheck and asked to return the van.

16. It is unknown when the claimant returned the employer's van.

17. In August 2021, no other letter was sent to the claimant except the letter that was sent to him on August 17, 2021, by the GM.

18. The employer did not send a letter to the claimant in August 2021 discharging him.

19. Sometime after August 23, 2021, the employer received a letter from a hospital indicating that the claimant was inpatient in the hospital from August 17-23, 2021.

20. The employer completed a fact-finding questionnaire for the DUA, stating that the claimant quit his job on August 14, 2021, and his resignation was accepted on August 17, 2021.

21. The employer also indicated in its fact-finding to the DUA that [sic] employer was not aware of the claimant's mental health issue until after he resigned.

Credibility Assessment:

Based on record, it is undisputed that the claimant sent an email to the supervisor on August 14, 2021, quitting his job. During the first hearing, the claimant testified that he retracted his resignation on August 14, 2021, and this retraction was accepted by the supervisor. He also testified that he told the supervisor that he was having mental health issues and wanted to seek help at a mental health facility, and the supervisor told him that he should go seek help and that he was all set. He testified that he believed that this statement meant he had the supervisor's permission to stay out of work to get medical help. He also testified that while he was [sic] of work getting medical help, the employer sent him a discharge letter.

During the remand hearing, the employer's human resources administrator testified that she did not have any firsthand knowledge as to whether the claimant had retracted his resignation or if this was accepted by the supervisor. She testified that the GM sent a letter to the claimant on August 17, 2021, accepting his resignation and providing him with his final paycheck. It is not reasonable or logical that if the claimant had retracted his resignation, which was accepted by the supervisor, that the GM would then later send a letter accepting the claimant's resignation. Additionally, the claimant was not present at the remand hearing and therefore did not provide any testimony as to why the employer would have sent him a letter accepting his resignation, if his recission had been accepted by the supervisor. Therefore, given all of the available evidence in the record, the claimant's testimony that he retracted his resignation and that it was accepted by the supervisor is not accepted as credible. Rather, the evidence supports a more reasonable and straightforward conclusion: that the claimant submitted his resignation on August 14, 2021, and it was formally acknowledged three days later in the August 17, 2021, letter.

> During the first hearing, the claimant also testified that while he was in the hospital, the employer sent him a discharge letter. He testified that he was unable to find the letter. During the remand hearing, the employer's witness testified that claimant was not sent a discharge letter by the employer. She testified that the only letter that was sent to the claimant was the letter sent on August 17, 2021. Where the claimant did not provide the alleged discharge letter and he was in the hospital around August 17, 2021, it is concluded that the letter sent on August 17, 2021, with his final paycheck was the letter by the GM. That letter was not a notification of his discharge, but of the claimant's resignation.
>
> The employer's fact finding also stated that the employer was not aware of the claimant's mental health issue until after he resigned. This statement is corroborated by the employer's testimony that the employer received a letter from the hospital after August 23, 2021, indicating that the claimant was a patient from August 17–23, 2021. Therefore, a finding was made that the claimant had not informed the employer of his mental illness on or about August 14, 2021.

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. In light of the new consolidated findings, we reject the review examiner's original legal conclusion that the claimant is eligible for benefits, as outlined below.

The first question before us is whether the claimant resigned from his job or was discharged. Based only upon hearing the claimant's testimony at the original hearing, the review examiner concluded that he had been discharged. Specifically, the review examiner found that, although the claimant had submitted a resignation, he was given permission to rescind the resignation and then had been fired. This initial testimony is captured in the credibility assessment above. However, upon hearing the employer's witness testify at the remand hearing, the review examiner has revised her findings. The consolidated findings now show that the claimant had never been discharged. He resigned. *See* Consolidated Findings ## 7, 9–11, 15, and 18.

In doing so, the review examiner accepted the employer's version of events as more credible. "The review examiner bears '[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .'" Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). Unless such assessments 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). "The test is whether the finding is supported by "substantial evidence.'" Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted.) "Substantial evidence is

'such evidence as a reasonable mind might accept as adequate to support a conclusion,' taking 'into account whatever in the record detracts from its weight.'" Id. at 627–628, *quoting* New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted). For the reasons discussed in her credibility assessment, we believe that the new findings are reasonable in relation to the evidence presented.

We note that the employer witness who appeared to offer testimony at the remand hearing admitted that she had no firsthand knowledge of the claimant's separation but offered testimony based upon the employer's records. As such, her testimony is hearsay. Hearsay evidence is not only admissible in informal administrative proceedings, but it can constitute substantial evidence on its own if it contains "indicia of reliability." Covell v. Department of Social Services, 439 Mass. 766, 786 (2003), *quoting* Embers of Salisbury, Inc. v. Alcoholic Beverages Control Commission, 401 Mass. 526, 530 (1988). Here, we agree with the review examiners' assessment. Her testimony contains indicia of reliability, as it is corroborated by the undisputed evidence of the claimant's email resignation and, in all other areas, her description of events was detailed, consistent, and more plausible than the claimant's countervailing direct testimony.

Where a claimant resigns from employment, his eligibility for benefits is properly analyzed pursuant to G.L. c. 151A, §§ 25(e)(1), 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.

These provisions expressly place the burden of proof upon the claimant.

In his email resignation, the claimant explained that he resigned because a coworker had made unwelcome advances toward his girlfriend, which apparently took place outside of work at a bar. *See* Consolidated Findings ## 5–7. While the claimant may have had valid personal reasons for ending his employment, this reason does not amount to either good cause attributable to the employer or urgent, compelling, and necessitous reasons for resigning.

To prove good cause attributable to the employer, we 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). Consolidated Finding # 5 indicates that the claimant, his girlfriend, and the coworker were socializing at a bar. Since nothing in the record indicates that the coworker's conduct took place either in the workplace or during work hours, it is not attributed to the employer.

The record does indicate that, around the time the claimant separated from his job, he was pursuing mental health treatment. *See* Consolidated Findings ## 12–14. "[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) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work).

However, the claimant's email plainly states that he resigned due to the coworker's conduct. It does not mention any mental health issues. *See* Consolidated Finding # 7. As reflected in the findings and credibility assessment, the review examiner has determined that the claimant never discussed his mental health issues with his supervisor before or immediately after this email. *See* Consolidated Finding # 11. Apparently, the employer did not learn of such medical issues until later. *See* Consolidated Finding # 19. Under these circumstances, the claimant has not shown that he left his employment for urgent, compelling, and necessitous reasons.

We, therefore, conclude as a matter of law that the claimant voluntarily resigned from his employment. We further conclude that he has not demonstrated that he did so for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances. The claimant has not met his burden to show he is eligible 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 August 8, 2021, 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 - February 22, 2023**

Paul T. Fitzgerald, Esq.
Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

AB/rh