

Where the claimant was discharged for a no-call, no-show, she brought her unemployment on herself and her separation is analyzed pursuant to G.L. c. 151A, § 25(e)(1). However, the claimant established that she failed to report for work or call-in due to a relapse of her alcoholism. She was unable to preserve her employment by contacting the employer because of her medical condition and treatment at the time, which included disorienting prescription drugs. Held she is eligible for benefits due to urgent, compelling, and necessitous circumstances.

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0073 9172 99

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 reverse.

The claimant was discharged from her position with the employer and filed a claim for unemployment benefits with the DUA, effective November 14, 2021, which was denied in a determination issued on January 29, 2022. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on June 6, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that, because the claimant failed to make efforts to preserve her job, she did not show that she left her employment for urgent, compelling, and necessitous reasons and 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 more evidence about the claimant's medical condition and circumstances at the time of separation from employment. Both parties 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 was ineligible for benefits because she failed to make reasonable efforts to preserve her employment while hospitalized, 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 are set forth below in their entirety:

1. In 2013, the claimant was diagnosed with post-traumatic stress disorder (PTSD) after returning from service with the U.S military in Afghanistan.
2. In August 2020, the claimant was diagnosed as an alcoholic by providers at the Department of Veterans Affairs (VA).
3. In early 2021, the claimant began a recovery program that included weekly meetings and sponsorship. In mid-2021, the claimant got a sponsor.
4. In September 2021, the claimant had a relapse of alcohol dependence.
5. On September 9, 2021, the claimant sought treatment at the [Hospital A] emergency room.
6. On September 13, 2021, the claimant began work as a full-time medical technologist for the employer, a pharmaceutical company. She was scheduled to work Monday through Friday from 8 a.m. to 4:30 p.m. earning \$33 per hour.
7. The claimant relapsed, and on Monday, September 20, 2021, she began calling out of work.
8. On Wednesday, September 22, 2021, the claimant sought treatment at a hospital emergency room for alcohol dependence.
9. On Thursday, September 23, 2021, the claimant entered inpatient psychiatric services at the [Hospital B] in [City A]. The claimant informed the employer she would be absent from work. While there, she detoxified and was treated for alcohol use disorder and PTSD. She was discharged on Monday, September 27, 2021.
10. The [Hospital B] gave the claimant a note excusing her from work from September 22, 2021, to September 27, 2021. The claimant provided the note to the employer.
11. On September 28, 2021, the claimant relapsed and went to the [City B] Hospital emergency room. Her provider gave her a note clearing her to return to work on September 30, 2021. The claimant provided the employer with the note.
12. The claimant last performed work for the employer on Thursday, September 30, 2021.
13. Also, on or about Thursday, September 30, 2021, the claimant began drinking. She called out of work on Friday, October 1, 2021, stating she had a medical appointment. She did not receive medical services.
14. The claimant continued to drink. She did not call out of work on Monday, October 4, 2021, and Tuesday, October 5, 2021, because of the relapse.

15. On Wednesday, October 6, 2021, the claimant went to [City B] Hospital's emergency room and was transferred to the [Hospital B] for detoxification.
16. On Friday, October 7, 2021, the claimant was admitted to the [Hospital B], where she remained until November 26, 2021. While there, her treatment program progressed, and additional options became available. She participated in treatment programs for PTSD and alcoholism.
17. The claimant did not contact the employer because she was participating in a detoxification program that included disorienting drugs.
18. The employer considered the claimant to have abandoned her job and separated her as of October 8, 2021.
19. On November 15, 2021, the claimant filed a new claim for unemployment benefits with a benefit year beginning November 14, 2021. She filed her claim using a [Hospital B] computer from the [Hospital B] program.
20. After her release, the claimant continued participating in the recovery program she began participating in early 2021. From November 2021 until March 2022, she participated in a weekly dialectical therapy group meeting. She also sees her therapist each week.
21. The claimant has been sober since October 2021.
22. The claimant did not previously disclose to the DUA that she received treatment for alcoholism because she was uncomfortable revealing personal information.
23. The claimant has been suicidal at certain times since 2013. She does not always admit this to providers because she believes disclosure will require treatment she does not want. She states she is not currently suicidal.

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 to note as follows. Consolidated Finding # 14 is accurate insofar as it states that the claimant did not call out of work on October 4 and 5, 2021, but it omits the undisputed material fact that she also did not attend work on those dates. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, given the consolidated findings after remand, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

The record shows that the employer ended the claimant's employment as of October 8, 2021, because she had been a no-call, no show for three days, October 4, 5, and 6, 2021. *See Consolidated Findings ## 14, 15, 17, 18, and Exhibit 3.*¹ In Olechnicky v. Dir. of Division of Employment Security, the Supreme Judicial Court upheld the Board's conclusion that the failure of an employee to notify the employer of the reason for absence is tantamount to a voluntary leaving of employment within the meaning of G.L. c. 151A, § 25(e)(1). 325 Mass. 660, 661 (1950). Thus, this case is properly analyzed pursuant to G.L. c. 151A, § 25(e)(1), which provides, in relevant 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 . . .

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 language in both of these provisions places the burden of proof on the claimant.

We agree with the review examiner that the claimant did not show that she separated for good cause attributable to the employer, as there is no suggestion in the record that the employer did anything to cause the claimant to not report for work or call in. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (in order to show good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving).

We next consider whether the claimant has demonstrated urgent, compelling, and necessitous reasons for abandoning her job. "[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).

In this case, the record shows that the claimant, a U.S. military veteran who served in Afghanistan, had been diagnosed with alcoholism in 2020, and, later, PTSD. *See Consolidated Findings ## 1,*

¹ Exhibit 3 is the employer's letter, dated October 6, 2021, terminating the claimant's employment. While not explicitly incorporated into the review examiner's findings, it 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, 9, 16, and Remand Exhibit 7.² She did not call in or report for work on October 4, 5, and 6, 2021, because of a relapse with alcohol, which led to a hospitalization for detoxification. *See Consolidated Findings ## 14 and 15.*

In Board of Review Decision 0026 2284 78 (Mar. 28, 2019), we stated that, to render a separation involuntary due to urgent, compelling, and necessitous circumstances related to alcoholism, a claimant must show that, before the incident that caused the claimant to lose a job, the claimant knew that he or she was an alcoholic and had tried but was not successful at controlling the disease. We further stated that claimants who can meet this burden will have shown that they lost the job due to circumstances beyond their control, and they may not be disqualified under G.L. c. 151A, § 25(e)(1). *Id.* at p. 5–6.

The consolidated findings in this case show that, prior to October 4, 2021, the claimant had struggled to control her alcoholism. Earlier in 2021, she began a recovery program that included weekly meetings and a sponsor. Consolidated Finding # 3. In early September, 2021, she experienced a relapse and sought treatment at the emergency room. *See Consolidated Findings ## 4 and 5.* She relapsed again on September 20, 2021, and returned to the emergency room, followed by inpatient psychiatric services to treat both her alcohol use disorder and PTSD. *See Consolidated Findings ## 7–9.* In our view, these findings show that at the time she was a no-call, no-show for her medical technologist job with the employer, she had already been diagnosed with alcoholism and had tried but was not successful at controlling the disease. Her separation was due to urgent, compelling, and necessitous circumstances.

However, our analysis does not stop here. Even if the claimant has carried her burden to show that circumstances beyond her control were forcing her to resign, “[p]rominent among the factors that will often figure into the mix when the agency determines whether a claimant’s personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant had taken such ‘reasonable means to preserve her employment’ as would indicate the claimant’s ‘desire and willingness to continue her employment.’” Norfolk County Retirement System, 66 Mass. App. Ct. at 766, quoting Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–98 (1974).

Following the original hearing, the review examiner concluded that the claimant failed to demonstrate reasonable efforts to preserve her employment. Specifically, she failed to provide substantial evidence explaining why she could not contact the employer to notify them of her absences. In part, this was due to the claimant’s hesitancy to reveal the extent of her illness or treatment. On remand, she has provided extensive medical evidence and testimony about her condition on October 4, 5, and 6, 2021. The review examiner has now found that she could not call the employer because of the alcoholism relapse and detoxification treatment, which included disorienting drugs. *See Consolidated Findings ## 15–17.* In short, the record now shows that, due to her medical condition, she was unable to contact the employer to report her absence.

We, therefore, conclude as a matter of law that because the claimant’s separation was due to urgent, compelling, and necessitous reasons, she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

² Also part of the undisputed record is Remand Exhibit 7, the claimant’s [Hospital B] medical records.

Charges from the employer's account should be removed consistent with G.L. c. 151A, § 14(d)(3).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning November 14, 2021, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 31, 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.

AB/rh