

**Board of Review
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Member
Michael J. Albano
Member**

Issue ID: 0076 2258 33

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 the claimant benefits following his separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On May 12, 2022, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed, and only the claimant attended the hearing. In a decision rendered on September 28, 2022, the review examiner affirmed the agency determination, concluding 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).

Ruling of the Board

The review examiner found the claimant indefinitely ineligible for benefits beginning January 30, 2022, because he did not show he left work for urgent, compelling, and necessitous reasons and did not take reasonable steps to preserve his employment before choosing to resign.

Although we believe the hearing decision reached the correct result, we do not agree that the claimant quit his employment. The record indicates that the claimant initially was granted a leave of absence but was later discharged by the employer because he chose not to return to work and failed to inform the employer why he was not returning to his position.

While we believe that the claimant's separation should have been decided under G.L. c. 151A, § 25(e)(2), we conclude that the outcome of the decision would have remained the same. It was the claimant's volitional act of failing to return to work that caused the employer to sever the employment relationship. Accordingly, it cannot be said that the claimant was "thrown out of work through no fault of [his] own." Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 733 (1986), *citing* Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002, 1003 (1985).

As the claimant was noticed that his eligibility for benefits would be considered under G.L. c. 151A, § 25(e)(1) and § 25(e)(2), we do not believe further action is necessary for the Board to complete its review of the September 28, 2022, decision.

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's ultimate conclusion is based on substantial evidence and is free from any error of law affecting substantive rights.

The review examiner's decision is affirmed. The claimant is denied benefits for the week of January 30, 2022, 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.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 26, 2022



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.

LSW/rh