

**Although the claimant contended he was discharged, the record after remand establishes that he resigned by email because he was dissatisfied with his position. The claimant did not meet his burden to show that he left for good cause attributable to the employer or urgent, compelling, and necessitous circumstances, and is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0076 0985 16**

### 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 and filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 15, 2022. 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 November 5, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the employer failed to show that the claimant 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 remanded the case to the review examiner to afford the employer an opportunity to testify. Only the employer attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact and credibility assessment. 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 discharged for unsatisfactory job performance, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings after remand establish that the claimant left work voluntarily due to job dissatisfaction.

### Findings of Fact

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

1. From January 4, 2021, until May 25, 2021, the claimant worked full-time for the employer, an audio-visual company, as a business development manager.
2. The claimant's job offer letter shows his start date was January 4, 2021.
3. The claimant's salary was \$110,000 per year.
4. The owner was satisfied with the claimant's performance throughout his employment.
5. At no point throughout his employment did the claimant alert the owner or the human resources manager that he was dissatisfied with the employer's working conditions or his job duties.
6. The claimant did not have any disciplinary history nor performance concerns. The owner completed a 90-day performance review and was pleased with the claimant's performance.
7. The claimant was employed full-time and his paychecks for the period beginning January 1, 2021, through May 29, 2021, show he worked 40 hours per week and his rate of pay was \$52.88 per hour. His gross weekly pay was \$2,115.38.
8. The claimant filed consecutive weekly requests for unemployment benefits for the period beginning January 4, 2021, until May 29, 2021. For each week, the claimant certified that he did not work, and he did not report any earnings.
9. The employer's owner and human resources manager asked the claimant why he was filing for unemployment benefits weekly after they received a fact-finding questionnaire from the DUA. The claimant responded that it was a "mistake."
10. The claimant resigned from his position on May 24, 2021, at 6:11 p.m. via email to the owner. The reason for the claimant's resignation was due to job dissatisfaction.
11. The owner did not ask the claimant for his resignation.
12. On May 25, 2021, the claimant reported to work and had a meeting with the owner in the morning about his resignation. He informed her he was dissatisfied with his position. The owner accepted his resignation. The claimant did not work the full day and returned his equipment to the employer. The claimant was paid for working a full day.
13. The claimant's timecard shows his last day worked was May 25, 2021.

Credibility Assessment:

The employer provided credible documentation and testimony showing that the claimant began working for the employer on January 4, 2021, and resigned from his position on May 25, 2021. The employer's records of the claimant's offer letter, paychecks, timecards, and resignation email show the claimant was employed full time from January 4, 2021, until May 25, 2021. Even though the claimant was employed full time he continued to file for unemployment benefits weekly and he failed to report his earnings. His response to the employer's owner and human resources manager when asked about the weekly claims was disingenuous. His testimony at the previous hearing that the employer terminated him was refuted by the employer's substantial documentation provided at the remand hearing. The claimant did not participate in the remand hearing or provide documentation to refute the employer's claims.

### 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. 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. However, as discussed more fully below, we reject the review examiner's initial legal conclusion that the claimant is entitled to receive benefits in view of her consolidated findings of fact after remand.

Initially, the review examiner found that the claimant was discharged for unsatisfactory job performance on May 24, 2021. Based solely on the claimant's testimony at the initial hearing, the review examiner credited his testimony that he had been discharged by the employer's president because she was not pleased with his job performance. The review examiner awarded benefits after analyzing the claimant's separation under G.L. c. 151A, § 25(e)(2).

After remand, however, the review examiner found that the claimant was not discharged. Instead, the review examiner found that the claimant resigned from his job by email to the employer's owner at 6:11 p.m. on May 24, 2021, citing dissatisfaction with his position. Although the parties disputed the nature of the claimant's separation, the review examiner found that the claimant voluntarily resigned due to dissatisfaction with his job. The review examiner found that the owner did not ask the claimant to resign, and that she and the claimant met on May 25, 2021, where he reiterated his dissatisfaction with the position. *See Consolidated Findings ## 10–12.*

In support of her consolidated findings, the review examiner made a credibility assessment accepting the employer's version of events regarding the nature of the claimant's separation. 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).* As noted above, we believe that the review examiner's assessment is reasonable in relation to the evidence presented.

Because we agree that the claimant initiated the separation and left his job voluntarily, his eligibility for benefits is properly analyzed pursuant to the following provisions under G.L. c. 151A, § 25(e), which provide, in pertinent part:

[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 statutory language of these provisions places the burden of proof upon the claimant. We consider whether the claimant has presented good cause attributable to the employer or urgent, compelling, and necessitous reasons for leaving his job.

To establish good cause, the claimant must show that the employer acted unreasonably. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980). We see nothing in the consolidated findings that indicates that the employer acted unreasonably. The review examiner credited the employer's testimony that the claimant had no disciplinary history or performance concerns, and the owner had completed a 90-day performance review and was pleased with his job performance. *See Consolidated Finding # 10*. There is nothing in the record after remand to show that the employer had engaged in any conduct that could constitute good cause for the claimant to separate from employment. Therefore, the claimant failed to establish that he left for good cause attributable to the employer.

Further, the claimant has not met his burden to show urgent, compelling, and necessitous circumstances that caused him to leave the job. Our standard for determining whether a claimant's reasons for leaving work are urgent, compelling, and necessitous has been established by the Supreme Judicial Court. We 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 v. Comm'r of Department of Employment and Training*, 412 Mass. 845, 848, 851 (1992). Here, because the claimant initially maintained that he was discharged and did not participate in the remand hearing, he failed to present evidence of any pressing or unusual circumstances that required him to leave his employment when he did.

We, therefore, conclude as a matter of law that the claimant voluntarily separated from his employment without establishing good cause attributable to the employer or urgent, compelling, and necessitous reasons for leaving as meant under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending May 29, 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 - April 26, 2024**



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](http://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.

JPCA/rh