

While on injury leave, the claimant quit after being notified that his employer was conducting an internal investigation for his violation of the employer's outside work policy. Held he did not show that he left for good cause attributable to the employer, or under a reasonable belief of imminent discharge. Nor did the claimant demonstrate that his mental health issues created an urgent reason to leave when he did as he was on paid leave. The claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0079 2558 26

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 January 20, 2023. He filed a claim for unemployment benefits with the DUA, effective February 12, 2023, which was denied in a determination issued on March 7, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on April 19, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for urgent, compelling, and necessitous reasons and, thus, was not disqualified pursuant to G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's resignation was due to urgent, compelling, and necessitous reasons because of his inability to perform his job duties due to his medical condition, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked as a patrolman for the employer, a town police department, beginning in 2003.

2. In September 2019, the claimant was placed on a Last Chance Agreement for conduct unbecoming of an officer.
3. The claimant last worked in July 2021. At that point, he was placed on injury leave for mental health issues.
4. Around that time, the claimant had responded to a fatal car crash and the incident caused him stress and depression.
5. His work entailed frequently responding to traumatic events.
6. The claimant has been diagnosed with Generalized Anxiety Disorder, Post Traumatic Stress Disorder, Derealization and Insomnia.
7. The claimant receives psychotherapy. His physician indicated he should stop his career as a police officer due to his mental health status.
8. The claimant filed for Accidental Disability Retirement. He was seen by three independent medical examiners.
9. On 9/15/21, [Doctor A] wrote that the claimant was permanently disabled due to job related incidents and stress.
10. On 3/11/22, [Doctor B] wrote that the claimant was permanently disabled from his job due to his work as a patrolman.
11. On 3/3/22, [Doctor C] wrote the claimant was permanently disabled due to his psychiatric issues related to his work.
12. The employer denied his application for Disability Retirement benefits.
13. In January 2022, the employer filed paperwork seeking to remove the claimant from receipt of his medical leave benefits.
14. The claimant previously worked in a funeral home. While he was out of work on medical leave, he considered returning to that type of work so he could support his family. He renewed his embalmer's license.
15. In August/September 2022, the claimant worked two times as an embalmer but determined that type of work was also too stressful and affected his mental health in a negative manner.
16. The claimant knew he had to receive approval from the Police Chief prior to working for any other employer.
17. The employer decides what type of employment is allowed on a case-by-case basis.

18. The employer can discipline employees or terminate them for failing to notify the employer of their outside employment.
19. The claimant had previously received approval to work in a chocolate shop from the Chief.
20. On 1/13/23, the claimant received a “Notice of Internal Investigation” relating to his failure to obtain approval to perform work at the funeral home.
21. The claimant’s lawyer was working with the employer’s lawyer on his employment issues. He is also working on reapplying for disability retirement.
22. On 1/20/23, the claimant chose to resign instead of participating in the internal investigation.
23. The claimant chose to resign because he hadn’t worked in years and was not going to be able to return to his work as a patrolman due to his mental health status. Resigning also allowed him to collect a part of his pension and avoid the internal investigation.
24. The claimant believed he would be terminated because the employer expressed interest in using his budgeted salary for other reasons.

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant is eligible for benefits.

Because the claimant resigned from his employment, we analyze his eligibility for benefits 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. . . .

The express language of these provisions assigns the burden of proof to the claimant.

In her findings of fact, the review examiner points to several reasons that explain why the claimant voluntarily resigned from his position: 1) the claimant would not be able to work due to his mental health status; 2) the claimant believed that he would be terminated due to budgetary reasons; 3) resigning allowed the claimant to collect a part of his pension; and 4) by resigning, he would avoid the internal investigation.

First, we consider whether any of these reasons constitute good cause attributable to the employer. In determining whether there was good cause attributable to the employer, the 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).

Here, the employer notified the claimant that he was being internally investigated due to his failure to obtain approval to perform work at a funeral home. *See Findings of Fact # 20*. The employer's conduct was reasonable and appropriate, because the claimant allegedly violated the employer's outside employment policy. Therefore, this reason did not constitute good cause attributable to the employer to resign.

Second, contrary to the review examiner's conclusion, the claimant failed to prove that he voluntarily left work due to urgent, compelling, and necessitous reasons. "[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).

Indeed, the claimant was diagnosed with several mental health disorders, which ultimately led to him being placed on injury leave. *See Findings of Fact # 6–7*. Although diagnosed and advised that he was permanently disabled as early as September of 2021, the claimant remained on paid injury leave in early 2023.¹ *See Findings of Fact ## 3 and 9*. Nothing about these facts indicates an urgent reason to resign on January 20, 2023. *See Finding of Fact # 22*.

Third, Finding of Fact # 22 states that the claimant's resignation allowed him to collect part of his pension. Leaving to collect a pension may have been a good financial decision for the claimant, but it does not have anything to do with the employer's actions, nor does it constitute an urgent, compelling, and necessitous reason to leave employment.

Fourth, Finding of Fact # 24 provides that he was anticipating being discharged from his employer due to budgetary reasons. The Supreme Judicial Court has held that, if employees leave employment under the reasonable belief that they are about to be fired, their leaving cannot fairly

¹ The claimant and employer both testified that the claimant was still receiving his full salary pay while on injury leave. While not explicitly incorporated into the review examiner's findings, this testimony 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).

be regarded as voluntary within the meaning of G.L. c. 151A, § 25(e)(1). Malone-Campagna v. Dir. of Division of Employment Security, 391 Mass. 399, 401–402 (1984), *citing* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597–598 (1981).

The claimant testified that his belief that he would be terminated for budgetary reasons was based upon rumors he heard from coworkers. This vague, uncorroborated hearsay evidence does not rise to substantial evidence of discharge. Thus, the record before us does not show that the claimant reasonably believed he was about to be fired for budgetary reasons.

Lastly, we consider whether leaving to avoid the internal investigation may also fall within the Malone-Campagna rule. The employer had not yet completed the internal investigation, reached a determination as to whether the claimant violated its policy, nor decided whether or not to terminate his employment. Because none of this had happened yet when the claimant resigned on January 20, 2023, he failed to show a reasonable belief that he was about to be discharged.

We, therefore, conclude as a matter of law that the claimant failed to show that he resigned for good cause attributable to the employer, for urgent, compelling, and necessitous reasons, or under a reasonable belief that he was about to be discharged. He is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning February 5, 2023, 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 - May 30, 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

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.

TF/rh