The claimant preferred to wear gloves while working because they provided relief for her dry skin. She felt frustrated that the employer no longer provided gloves after the COVID-19 pandemic. Although instructed to contact human resources the following day about her concerns, the claimant was a no-call, no-show for three consecutive shifts and did not bring any of her complaints to human resources. Held she abandoned her job without good cause attributable to the employer or urgent, compelling, and necessitous reasons pursuant to G.L c. 151A, § 25(e)(1), and she is ineligible for benefits.

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: 0080 2994 84

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 affirm.

The claimant separated from her position with the employer on March 8, 2023. She filed a claim for unemployment benefits with the DUA, effective May 14, 2023, which was denied in a determination issued on May 31, 2023. 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 July 18, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without showing good cause attributable to the employer and, thus, 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 afford both parties the opportunity to present evidence regarding the circumstances resulting in the claimant's separation. 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 that the claimant was disqualified under G.L. c. 151A, § 25(e)(1), because she did not take reasonable steps to preserve her employment when she failed to respond to the employer's communications about her absences, 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 and credibility assessment are set forth below in their entirety:

1. The claimant worked as a machine operator for the employer, a spouted pouch manufacturer. The claimant began work for the employer on September 24, 2021. She worked Sunday through Friday from 10:00 p.m. to 6:30 a.m. and earned $22 per hour.

2. The claimant has dry skin. She does not have a diagnosed medical condition.

3. The employer does not generally provide workers in any department with gloves.

4. The employer did provide employees with gloves during the COVID-19 pandemic emergency.

5. The claimant grew to prefer working with gloves because they relieved her dry hands.

6. In late 2023, the employer revised its COVID-19 policies to make gloves optional. In January 2023, the employer stopped providing gloves to employees in all departments.

7. The claimant was unaware of the change in written policy but learned that the employer was no longer providing gloves through word of mouth. She began purchasing and bringing gloves to work.

8. Several employees complained to their managers about the lack of gloves, and the employer's HR Generalist was aware of the complaints.

9. On Monday, March 6, 2023, the claimant arrived for her scheduled shift but forgot to bring gloves. The claimant asked her supervisor if she had any. The supervisor said she did not. The claimant showed her supervisor her dry hands and said she did not want to work without them. Their conversation became adversarial.

10. The supervisor told the claimant she could leave and call the employer's human resources department the following day.

11. The claimant was upset that gloves were no longer supplied and thought the supervisor was unreasonable.

12. The claimant went to other work areas and asked workers if she could use their gloves. No one offered to let her use their gloves.

13. The claimant returned to her work area and told her supervisor she was leaving. She clocked out at 10:53 p.m.

14. The supervisor told the Production Manager that the claimant left work.

15. On Tuesday morning, March 7, 2023, the supervisor and the Production Manager went to the employer's HR Generalist's office and reported that the claimant left work.

16. The claimant did not call the HR Generalist on Tuesday, March 7, 2023. She did not call or show up for her shift on Tuesday evening.

17. At 7:55 a.m. on Wednesday, March 8, 2023, the HR Generalist sent the Production Manager an email asking him to confirm the claimant walked off the job on March 6, 2023, and was a no-call no-show on March 7, 2023. She told him that once he confirmed, they would process it as job abandonment dated March 8, 2023. The Production Manager immediately responded that the supervisor had confirmed that she had not reported to work.

18. The employer maintains a PTO policy that states in part, "Not reporting to work and not calling to report the absence is a no-call/no-show and is a serious matter. A no call/no show lasting three days will be considered job abandonment and will be deemed an employee's voluntary resignation of employment."

19. The claimant acknowledged the employer's policies electronically on September 24, 2021.

20. The employer's receptionist performed administrative work for the HR Generalist. At 7:58 a.m., the HR Generalist emailed the receptionist requesting to process the claimant's separation as a job abandonment dated March 8, 2023.

21. The claimant's contact information changed during her employment. Most recently, the claimant communicated with the HR Generalist using her husband's cell phone. The HR Generalist believed this was the best way to reach the claimant.

22. The HR Generalist called the claimant at her husband's cell phone number. She left a message asking the claimant to call. At 1:07 p.m., the HR Generalist also texted the same number, asking if the claimant wanted her to send her paycheck or have it mailed. The claimant's husband, who was at his job, called the claimant and let her know about HR Generalist's outreach.

23. The claimant called the employer and spoke with the receptionist. She told the receptionist she would be there the next day to pick up her check.

24. At 3:54 p.m., the HR Generalist emailed the supervisor that she should send the claimant home if she showed up for work. She states the claimant walked off her job and was then a no-call no-show, which is job abandonment.

25. The claimant did not call or show up for work on Wednesday, March 8, 2023.

26. On Thursday, March 9, 2023, the claimant went to the employer and received her paycheck from the receptionist. She waited approximately 30 minutes to speak with the HR Generalist. An administrative worker told the claimant that the HR Generalist was not available. The claimant left the employer.

27. The receptionist prepared and mailed a separation letter to the claimant. The letter states the employer considered her to have abandoned her job, and under their policy on job abandonment, they were terminating her employment. The letter also states: "If there are any extenuating circumstances, please notify us by March 15, 2023."

28. The claimant received and read the employer's separation letter.

29. On Wednesday, March 15, 2023, the claimant and the HR Generalist exchanged the following texts. The claimant used her own cell phone.

    Claimant: "Hi good afternoon, if they didn't mail the last check that I will go and pick it up, I got the letter in the mail about me abandoned the job. I didn't. I didn't have the gloves to work and my hands have a condition. I asked a supervisor for help and she told me to go home and contact HR to discuss an issue with the gloves. I didn't feel safe to work. I didn't call the next day because I wasn't notified with the issue of bringing my own gloves. Thank you very much have a nice day."

    HR Generalist: "Hello, I am sorry I don't have a record of this phone number. Who's this please?"

    Claimant: "(Claimant name)"

    HR Generalist: "Hi (Claimant) I did try to reach out to you but you didn't respond. You did not try to contact HR other than coming in to collect the check last week. We accepted your resignation when you did not show up for work after three consecutive shifts. Do you want this check mailed or do you want to come pick it up."

30. The claimant picked up her check on or about Monday, March 20, 2023.

31. On Monday, April 24, 2023, the claimant emailed the HR Generalist inquiring about returning to the employer. She states: "I sincerely regret my decision living [sic] my position at (employer)."

32. The HR Generalist responded that her position was filled.

Credibility Assessment:

The claimant testified at the hearing that her supervisor told her the HR department would call her. She also testified that she called the HR Generalist on March 7,

> 2023. However, in a March 15, 2023, text message to the HR Generalist, the claimant states, "I asked a supervisor for help and she told me to go home and contact HR to discuss an issue with the gloves. I didn't feel safe to work. I didn't call the next day..." This text discredits the claimant. The HR Generalist admitted at the hearing that it had not been three days since the claimant last worked when she instructed the receptionist to process the claimant's separation. This shows that the HR Generalist was careless, but this is insufficient to conclude that she deliberately attempted to misrepresent the facts. It is concluded that the HR Generalist's testimony was more credible than the claimant's.

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. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is not entitled to benefits.

The first question is whether to analyze the claimant's separation as a resignation or discharge. In this case, the employer considered the claimant to have abandoned her job after her third day of failing to call or show up for work. Consolidated Findings ## 18 and 27. Under these circumstances, the separation is treated as a voluntary resignation. Olechnicky v. Dir. of Division of Employment Security, 325 Mass. 660, 661 (1950) (upholding the Board of Review's conclusion that the failure of an employee to notify his 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)).

Because the claimant voluntarily left her employment, this case is properly analyzed pursuant to G.L. c. 151A, § 25(e), 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.

Under the above statutory regulation, the claimant has the burden of proof to show that she left her employment for good cause attributable to the employing unit or its agent or for urgent, compelling, and necessitous reasons. We conclude that the claimant has not met her burden.

The consolidated findings show that the claimant had dry skin and preferred to wear gloves while working. *See* Consolidated Findings ## 2 and 5. The employer no longer provided gloves to its

employees after the pandemic, and that the claimant began to purchase and bring her own gloves to work. *See* Consolidated Findings ## 3, 6, and 7.

On March 6, 2023, the claimant arrived for her scheduled shift without her gloves. She informed her supervisor that she preferred to wear gloves due to her dry skin, and that she was unable to borrow a pair from other coworkers. *See* Consolidated Findings ## 9 and 12. The supervisor authorized the claimant to leave work and told her to contact human resources the next day. The claimant left work. *See* Consolidated Findings ## 10 and 13.

However, on Tuesday, March 7, 2023, the claimant did not appear for her shift and did not call the HR Generalist. *See* Consolidated Finding # 16.

The review examiner also found that the employer reached out to the claimant on Wednesday, March 8, 2023. *See* Consolidated Findings ## 21 and 22. Although the claimant received the employer's communications, she did not call or show up to work. *See* Consolidated Finding # 25. Rather, she chose to contact the employer's receptionist only to indicate that she would be picking up her check the next day. *See* Consolidated Finding # 23.

On March 9, 2023, the claimant picked up her check and waited thirty minutes to see the HR Generalist until she was notified by the administrator that the HR Generalist was unavailable and then left. *See* Consolidated Finding # 26. We can infer from the record that March 9, 2023, is the third day that the claimant was absent from work without notifying the employer of her absence, because the employer prepared and mailed a letter that day indicating that the claimant had abandoned her job due to being a no-call no-show for three consecutive days. Consolidated Findings ## 18, 19, 26, and 27.

Although the claimant received and read the employer's separation letter, there was no further communication between the claimant and the employer until Wednesday, March 15, 2023. That day, the claimant texted the HR Generalist admitting that she did not contact human resources on March 7th as instructed by her supervisor. In the HR Generalist's response, she indicated that except for picking up the check, the claimant did not respond to any of the employer's communications. *See* Consolidated Finding # 29. During this text message exchange, the claimant did not refute the employer's assertion that she failed to respond to the employer's communications. However, the claimant contends that she did not return to work because she did not feel safe working without her gloves.

When a claimant contends that the separation was for 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). As detailed more fully below, the record before us does not establish that the employer's decision to no longer provide gloves adversely impacted the claimant's terms and conditions of employment, her health and wellbeing, or her ability to perform her assigned work. Therefore, based upon the evidence before us, we see nothing in the record to show that the employer had engaged in any unreasonable conduct that could constitute good cause for the claimant to separate from employment. Thus, the claimant failed to establish that she left for good cause attributable to the employer.

In the alternative, we consider whether the claimant established urgent, compelling, and necessitous reasons for her separation. "[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). To reach such a conclusion, we must 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, 412 Mass. at 848, 851.

Here, nothing in the record indicates that gloves were required to perform the necessary functions of the claimant's job. Nor did the claimant show that she has a diagnosed medical condition that would indicate the need to wear gloves while performing her job duties. *See* Consolidated Finding # 2. She preferred to wear gloves because it provided relief for her dry hands. *See* Consolidated Findings ## 2 and 5. Thus, her decision to wear gloves was a personal choice. Although the claimant may have become accustomed to wearing gloves, she did not provide any evidence indicating that, without gloves, her dry skin impacted her ability to perform her job. Under these circumstances, the claimant has not established that she suffers from a legitimate health concern that would have compelled her to leave her employment.

Moreover, since the employer no longer provided gloves for its employees, the onus was on the claimant to purchase her own gloves and bring them to work. Consolidated Findings ## 3, 6, and 7. Yet, knowing that she was responsible for buying her own gloves and bringing them to work, it is unclear why she did not purchase them and return to work the next day. She failed to explain why she was absent on March 7, 8, and 9, 2023, or account for her failure to contact the employer.

Even if we were to assume, *arguendo*, that the claimant had good cause attributable to the employer or urgent, compelling, and necessitous reasons to leave, prior to quitting she must make a reasonable attempt to correct the situation or show that her efforts would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93-94 (1984).

In this case, the claimant did not speak with the HR Generalist about either her skin condition or her feelings of frustration regarding the employer's decision to stop providing gloves, despite being directed to do so by her supervisor. Since the claimant did not give the employer a chance to address any of her work-related concerns before she stopped working, she has failed to show that she had taken reasonable steps to preserve her employment or that her efforts would have been futile.

We, therefore, conclude as a matter of law that the claimant failed to show that she left her employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending March 11, 2023, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.



BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 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.

DY/rh