

Claimant acted diligently in seeking work authorization renewal from the USCIS. When it did not come through in time, it was for reasons beyond his control. His separation is deemed to be involuntary due to urgent, compelling, and necessitous circumstances and he is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0081 1331 23

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 we reverse.

The claimant was discharged from his position with the employer on August 31, 2023. He filed a claim for unemployment benefits with the DUA, effective September 3, 2023, which was denied in a determination issued on October 3, 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 June 5, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having good cause attributable to the employer or urgent, compelling, and necessitous reasons, 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 take additional testimony and documentary evidence regarding the specific efforts the claimant made to renew his visa and employment authorization. Both parties 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 brought about his own unemployment because he failed to renew his work authorization document, 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 full-time as a Purchasing Manager for the employer, a manufacturer, from 5/6/19 through 8/31/23.

2. The claimant came to the United States in August 2018 on a five-year J-2 Visa as the spouse of a scholar. He is a French National.
3. When the claimant was hired, he informed his employer about his visa status.
4. On 9/22/21, the claimant and his wife met with attorneys to discuss the immigration process for employment-based cases.
5. On 10/18/21, the claimant's wife forwarded the information from the attorneys to her employer via email.
6. The claimant's wife worked on completing an application and went about obtaining necessary documentation including letters of recommendation for a green card.
7. Each year from 2021 to 2023, the claimant's employer helped him enter the lottery for a new visa; however, each year he was not selected.
8. On 1/22/22, the claimant's wife notified her employer that the claimant's employer was registering him for the H1B lottery again.
9. On 3/1/22, the claimant's wife's employer's attorneys emailed her and indicated they believed she was a candidate for an EB-1.
10. On 7/21/22, the claimant received a Certificate of Eligibility for Exchange Visitor status (J-2) that approved him from 9/1/18 through 8/31/23. The claimant's wife received a Certificate of Eligibility for Exchange Non-Visitor status (J-1) that approved her from 9/1/18 through 8/31/23.
11. Throughout the claimant's employment, his wife and her attorneys were working to renew or secure new visas for herself and the claimant simultaneously.
12. The claimant did not have access to much of the communication surrounding his citizenship requests because it was being handled by his wife's employer and their attorneys.
13. The claimant remembers filling out necessary documentation online to apply for or renew citizenship at some point.
14. Throughout his employment, the claimant also had continuous discussions with his employer about his citizenship. The employer worked with their immigration attorneys to assist the claimant.

15. A new Human Resource Manager began working for the claimant's employer in July 2023 and almost immediately began working to help the claimant with his citizenship issue.
16. The matter was complicated because the claimant's employer filed for Chapter 11 in May 2023. The claimant's employer was a subsidiary of a larger corporation and that corporation no longer wanted to assist the claimant with his pursuit of a green card because the subsidiary was being sold.
17. The matter was also complicated because the claimant's wife's employer was acquired by another company as well.
18. The claimant's employer also investigated whether he could move back to France and work remotely but that was not an option since he would have to leave his wife and children in the United States.
19. Also, if the claimant moved to France, the U.S. Government may view it as him giving up on his pursuit of a green card.
20. The claimant's employer sought advice from a second immigration law firm on the claimant's behalf since he was an employee in good standing. They were unable to determine any other way for the claimant to continue to be able to work after the upcoming expiration of his visa.
21. The claimant's J-2 Visa expired on 8/31/23.
22. On 8/18/23, the Vermont Service Center of the U.S. Citizenship and Immigration Services received an I-129 Petition for Non-Immigrant Worker for the claimant's wife.
23. On 8/22/23, the claimant's wife received an I-797A Notice of Action approval notice for an O-1 visa which allowed her to continue to work in the United States after 8/31/23.
24. The claimant was allowed to stay in the United States while his spouse held the O-1 visa, but he was not allowed to work.
25. The employer could not hold his position since he was unable to legally work in the United States after 8/31/23.
26. The claimant was a good employee. Work was available to him after 8/31/23 if he had been able to continue to legally work in the United States.
27. On 11/22/23, the claimant received notice of approval of an O-3 visa in response to his application to extend/change immigrant status (Form I-797A).

28. In early March 2024, the claimant received an Employment Authorization card which allowed him to work and travel as of 2/15/24. The card indicates that it serves as I-512 Advance Parole.

29. The claimant's wife received a new Employment Authorization Card valid 4/9/24 through 4/8/29.

Credibility Assessment:

The claimant has been a credible witness throughout both hearings. His testimony was supported by the employer's testimony and by the documentation in the record. Throughout their employment, the claimant's employer and his wife's employer worked to obtain the necessary documentation to allow them both to continue living and working in the United States. The claimant was not allowed to work in the United States between 9/1/23 and 2/14/24 due to his immigration status.

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 disagree with the review examiner's conclusion that the claimant is indefinitely ineligible for benefits.

Where a claimant's separation results from the claimant's failure to maintain or obtain a license or other statutory prerequisite for employment, the separation is deemed to be a quit rather than a discharge. Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion). The claimant's qualification for benefits is, therefore, governed by 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 terms of this section of law assign the burden to the claimant to show that he is eligible for benefits.

In order to show good cause attributable to the employer, the focus is on the employer's conduct. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). The record shows that the employer ended the claimant's employment due to not having a valid work authorization

document. Because the employer was not legally permitted to employ the claimant without one, it acted reasonably in ending the employment relationship. Since the employer's action was reasonable under the circumstances, there is no basis for concluding that the claimant's separation was for good cause attributable to the employer under G.L. c. 151A, § 25(e)(1).

The real question is whether the claimant separated involuntarily for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e). A "wide variety of personal circumstances" have been recognized as constituting "urgent, compelling and necessitous" reasons. 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). Here, the claimant's separation was compelled by an expired work authorization document. We consider whether the loss of the necessary credential was a result of circumstances beyond his control or, instead, was the result of the claimant's own conduct.

The record here shows that the claimant, a citizen of France, came to the United States in August of 2018 on a five-year J-2 visa as the spouse of a scholar. *See* Consolidated Finding # 2. Upon hire by this employer in 2019, the claimant informed them of his visa status. *See* Consolidated Finding # 3. In September and October of 2021, the claimant and his wife met with attorneys to work on the immigration process for employment-based cases. The claimant's wife gathered documentation to apply for a green card. *See* Consolidated Findings ## 4–6. Throughout the claimant's employment, his wife and her attorneys were working to renew or obtain new visas for herself and for the claimant simultaneously. *See* Consolidated Finding # 11.

Every year from 2021 through 2023, the claimant's employer helped him enter a lottery for a new visa, but he was not selected. *See* Consolidated Finding # 7. Throughout his employment, the claimant discussed his citizenship status with the employer and worked with their immigration attorneys. *See* Consolidated Findings ## 14–15. The employer investigated whether the claimant could return to France and work remotely, but he could not do this because he would have had to leave his wife and children in the United States and the U.S. government might have viewed this as abandoning his pursuit of permanent residency. *See* Consolidated Findings ## 18–19.

The visa applications of the claimant and his wife were further complicated because both the claimant's employer and his wife's employer were acquired by other companies. *See* Consolidated Findings ## 16–17.

On August 22, 2023, the claimant's wife received notice that her O-1 visa had been approved, allowing her to continue to work in the United States after August 31, 2023. *See* Consolidated Finding # 23. The claimant was allowed to legally remain in the United States while his spouse held a valid O-1 visa, but he could not legally work himself. *See* Consolidated Finding # 24.

The claimant's J-2 visa expired on August 31, 2023. *See* Consolidated Finding # 21. The employer could not hold his position because he was unable to legally work after August 31, 2023, although work would have remained available to him after August 31, 2023, if he had been able to continue to legally work in the United States. *See* Consolidated Finding ## 25–26.

On November 22, 2023, the claimant received notice that his O-3 visa had been approved. *See* Consolidated Finding # 27. In early March of 2024, the claimant received an Employment Authorization card which allowed him to work legally and travel as of February 15, 2024. *See* Consolidated Finding # 28.

The record before us shows that the claimant, his employer, his wife, and his wife's employer made numerous efforts, independently and collectively, to renew the work authorization of the claimant and his wife. All of these demonstrate diligent efforts to renew the claimant's work authorization.

In Board of Review Decision 0021 8150 72 (December 22, 2017), we held that a claimant, who diligently but unsuccessfully attempted to maintain his work authorization due to delays at the USCIS that were beyond his control, had established that he was out of work due to urgent, compelling, and necessitous reasons. The claimant's circumstances in the present case are very similar. The claimant could not control how quickly the USCIS processed his wife's and his visa applications, and there is no indication that he did anything or neglected to do something to slow down the process.

We, therefore, conclude as a matter of law that the claimant's separation from the employer was involuntary due to urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning September 3, 2023, and for subsequent weeks if otherwise eligible. The charges from the employer's account shall be handled consistently with G.L. c. 151A, § 14(d)(3).¹

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 26, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

¹ G.L. c. 151A, § 14(d)(3), provides that benefits shall not be charged to an employer's account, but to the solvency account, in any case where a claimant is not disqualified due to leaving work involuntarily under G.L. c. 151A, § 25(e)(1).

**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.

JPCA/rh