

**Claimant's employer laid her off due to lack of work. Since her separation from her employment was not due to misconduct or a violation of a rule or policy, she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2).**

**Board of Review  
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**Issue ID: 0082 1587 97**

### 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 reverse.

The claimant separated from her position with the employer on December 26, 2023. She filed a claim for unemployment benefits with the DUA, effective December 17, 2023, which was approved in a determination issued on March 19, 2024. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on May 9, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined 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). 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 give the claimant an opportunity to testify and present other evidence. Both parties attended the remand hearing. Thereafter, the review examiner issued her 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 original decision, which concluded that the claimant quit her employment without good cause attributable to her employer or for urgent, compelling and necessitous reasons, 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 an industrial athlete for the employer, a logistics and warehousing company, from 7/24/2023 until 1/19/2024.

2. The employer's site supervisor (SS) supervised the claimant.
3. On 12/20/2023, the claimant worked her last physical day for the employer.
4. On 12/21/2023, the claimant sent the SS a text message that said she would not be at work because she had a headache. The SS responded by text message and stated, "no problem, recover."
5. Around 12/26/2023, the SS told the claimant the employer laid her off.
6. The SS sent the claimant a text message that told her she was laid off, and he would speak with someone in the office the next day because she needed to collect.
7. On 12/27/2023, the claimant sent the SS a text message telling him she needed "the paperwork".
8. The claimant requested paperwork to confirm the lay off to file her claim for unemployment benefits.
9. On 12/28/2023, the SS responded to the claimant's text message by text message and told her that he would speak with someone to provide him with the paperwork.
10. The claimant sent the SS a text message on 12/28/2023 to follow up on the paperwork. The SS said he would send her the paperwork when he received it.
11. The claimant did not take a leave of absence.
12. On an unknown date after 12/29/2023, the claimant broke her cell phone and could not receive text messages or send text messages.
13. On 1/9/2024, the SS sent the claimant a text message and told her the employer expected her to return to work. He instructed the claimant to contact human resources for leave of absence options and reply to his text message by 1/11/2024.
14. The claimant did not receive the message and did not respond to the SS's text message because her phone was broken.
15. On 1/9/2024, the SS sent the regional human resources manager an email regarding his communication with the claimant. In it, he stated in part, "I mentioned to [the claimant] we will be resting IA's at least once this week due to work being slower."
16. On 1/15/2024, the SS sent the claimant an email and told her the employer expected her to return to work. He instructed the claimant to contact him and

told her the employer could provide accommodation for her if needed. The SS asked that the claimant respond to the email by 1/19/2024.

17. The employer received an email response that the SS's email to the claimant was not delivered.
18. On 1/16/2024, the SS sent the claimant a letter and told her the employer expected her to return to work. He instructed the claimant to contact him and told her the employer could provide accommodation for her if needed. The SS stated in the letter that if the claimant did not respond to the letter by 1/19/2024, the employer would consider that she resigned her employment.
19. The claimant did not respond to the letter by 1/19/2024.
20. On 1/19/2024, the employer determined the claimant quit her job when she did not respond to the 10/16/2024 [sic].
21. On 1/23/2024, the employer received the 1/19/2024 letter back from the post office stamped "Return to Sender".
22. The claimant did not quit her employment.

#### Credibility Assessment:

The human resources coordinator participated in the hearing on behalf of the employer. The claimant participated in the hearing.

The employer's witness testified that the claimant quit her employment when she failed to return to work from a leave of absence. However, the employer's witness failed to present substantial evidence in support of her testimony. The employer's witness was only able to attribute her time off after 12/21/2023 to a leave of absence. However, there was no documentary evidence presented to determine whether a leave of absence had been requested or approved. Further, the email dated 1/09/2024 from the SS to the regional human resources manager indicated that the SS "rested" the IAs and the employer's witness testified that there was no record of such "rest". The human resources coordinator had no direct knowledge of the SS's conversations with the claimant.

The claimant offered firsthand testimony that the SS laid her off around 12/26/2023. She further provided text messages to confirm that the SS discussed her lay off at the time. The text messages also corroborated her testimony that he attempted to provide her [sic] paperwork that confirmed her lay off. The claimant also testified she did not receive any further text messages from the SS due to a broken cell phone.

Although the employer's witness provided documentation to support her testimony in the form of the email from the SS about his correspondence timeline, the

document failed to corroborate her testimony as she was unaware of the “rest” given to the IAs. The employer’s testimony and hearsay evidence were rebutted by the direct testimony of the claimant, and further rebutted by the text messages she provided. Therefore, the testimony and hearsay evidence of the employer cannot be considered to be “substantial” as required by the Law. The claimant offered more credible testimony that she did not quit her job and was discharged when the SS laid her off on 12/26/2023.

### 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, in light of the consolidated findings, we reject the review examiner’s original legal conclusion that the claimant is not eligible for benefits.

The employer contends that the claimant quit her employment. However, after hearing the claimant’s testimony and reviewing her documentary evidence during the remand hearing, the review examiner found that the claimant’s supervisor notified her that she was laid off on approximately December 26, 2023. Consolidated Finding # 5. Since the employer initiated the separation, the claimant’s eligibility for benefits will be analyzed pursuant to G.L. c. 151A, § 25(e)(2), 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit’s interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee’s incompetence . . . .

“[T]he grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee’s right to benefits, and the burdens of production and persuasion rest with the employer.” Still v. Comm’r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

The consolidated findings reflect that the claimant was laid off on approximately December 26, 2023, because work was slow. Consolidated Findings ## 5 and 15. Because the claimant was laid off due to a lack of work, and nothing in the record indicates that she had violated a rule or policy or engaged in any misconduct, there is no basis to disqualify her pursuant to the provisions of G.L. c. 151A, § 25(e)(2). We note that the findings also reflect that the employer unsuccessfully tried to contact the claimant through a variety of means about returning to work after December 26<sup>th</sup>. Consolidated Findings ## 13–19, and 21. However, because there is no indication in the record

that the claimant was told her layoff was temporary, we will treat it as a permanent separation. Accordingly, since the only issue before us is the claimant's permanent separation on December 26, 2023, we will not consider anything that happened after that date in this decision.

We, therefore, conclude as a matter of law that the claimant is eligible for benefits under G.L. c. 151A, § 25(e)(2), as her separation from the employer was the result of a layoff.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning December 24, 2023, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - November 27, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. 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.

SVL/rh