

**After the claimant abandoned her position because she was a no call/no show, the review examiner rejected as not credible her testimony that she resigned because the employer was not providing her with proper PPE. Held the claimant has not shown that she resigned for good cause attributable to the employer or for urgent, compelling, and necessitous reasons, and she is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0082 8323 00**

### 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 her position with the employer on March 29, 2024. She filed a claim for unemployment benefits with the DUA, effective May 19, 2024, which was denied in a determination issued on July 12, 2024. 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 August 29, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was not 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 employer's appeal, we remanded the case to the review examiner to obtain additional evidence pertaining to the reason for the claimant's separation from employment. Both parties attended the remand hearing. However, because of severe weather in her location, the claimant was disconnected from the hearing shortly after it began. The Board remanded the case to the review examiner again to afford the claimant the opportunity to testify and provide additional evidence. Only the employer attended the second 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 decision, which concluded that the claimant resigned for good cause attributable to the employer because the employer refused to provide the claimant with personal protective equipment while working with materials that produced toxic fumes, 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 for the instant employer, a truck and trailer repair & leasing company, repairing truck trailers from May 30, 2023, to March 29, 2024. The claimant's rate of pay was approximately \$19.50 per hour.
2. The claimant's schedule was Monday to Friday, 7:00 a.m. to 5:00 p.m. The work consisted of welding, sanding, painting, etc. as per each trailer's needs.
3. The claimant provided her own welding tools and helmet, and the employer provided the claimant with a respirator mask and all additional personal protective equipment to complete the assigned work.
4. The employer has passed all OSHA inspections and audits.
5. The claimant never requested additional or different respiration equipment from her manager or the employer.
6. The claimant did not file any complaints regarding safety issues or concerns with the employer.
7. On Monday, April 1, 2024, the claimant did not appear for work. At 7:01 a.m., the claimant sent a text message to the Operations Manager stating that her car would not start. The manager replied, "Okay".
8. On April 2, 2024, at 6:19 a.m., the claimant sent a text to the manager stating that if her car is done in the shop, she will be in to work but that she would have to wait until the place opens. No further contact was made on April 2, 2024.
9. On April 3, 2024, the claimant did not appear for work. At 10:41 a.m., the claimant sent a text message to the manager stating that "I prob gunna [sic] get fired so ill [sic] schedule a day I can pick up my tools". The manager attempted to call the claimant in response to her text message and the claimant did not answer the call. The claimant sent a text message that she is in court, and she can't pick up. The manager asked the claimant to let him know when she would be coming in.
10. The claimant was next scheduled to work April 4, 2024, and April 5, 2024, 7:00 a.m. -5:00 p.m.
11. On April 4, 2024, the claimant did not appear for work and did not notify her manager.
12. On April 5, 2024, the claimant did not appear for work. At 8:54 a.m., the claimant sent a text message ask[ing] if she could get her tools the following Monday. The manager responded yes, no problem.

13. On or about April 11, 2024, the claimant removed her tools from the shop toolbox. The claimant left the company provided respirator in the toolbox.
14. The employer terminated the claimant on April 4, 2024, as a quit based on the text message of April 3, 2024, and her no show no call of April 4, 2024. The employer had worked with the claimant in the past regarding attendance. The no contact was a different situation.
15. On June 6, 2024, the claimant sent a text message to the Operations Manager asking if there was a way that she could get her job back.

#### Credibility Assessment:

The employer's witnesses at the hearing credibly testified to the sequence of events that led up to the claimant's final days of work in April of 2024. The employer provided text message evidence which corroborated their testimony of the no show no calls by the claimant, as well as the message requesting her job back in June. After examining the new evidence, the claimant's credibility in the first hearing is in question. While testimony is often not corroborated with documentation, the claimant testified that she repeatedly reported the safety problem and requested proper respiration equipment and was constantly put off, and had to quit without notice for her personal safety. However, in June she requested her job back without a mention of safety issues. That coupled with the fact that the claimant completely neglected to mention any the events of the first week of April 2024 and stated that she quit the last week in March leads to assessing the credibility of the testimony as to the facts of what transpired in the favor of the employer.

#### 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 legal conclusion that the claimant is entitled to benefits.

The claimant separated from her employment, in part, because she failed to report to work as scheduled without notifying the employer on April 4, 2024. Consolidated Finding # 14. Thus, her separation is properly viewed as voluntary job abandonment. 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)).

As the claimant voluntarily separated from her employment, this case is properly analyzed under the following provisions of G.L. c. 151A, § 25(e), which provide, 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 places the burden of proof upon the claimant.

The claimant testified that she resigned from her position because the employer failed to provide her with the personal protective equipment (PPE) that she required to safely perform her duties as a welder. When a claimant contends that her 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).

Following remand, the review examiner rejected the claimant's testimony as not credible. *See* Consolidated Finding # 3. 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). In a text message dated April 3, 2024, the claimant informed her supervisor that she would not be returning to work because she believed that her discharge was imminent. *See* Consolidated Findings ## 9, and 12–14. Her statements in this text directly detract from her contention that she quit because the employer was creating an unsafe environment. Further, as the claimant failed to produce documentary evidence corroborating her testimony that she repeatedly reported safety concerns to the employer and requested that they provide her with proper PPE, we believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

Consistent with the review examiner's credibility assessment, the claimant failed to show that she resigned because of some decision made or action taken by the employer. Therefore, she has not met her burden to show that she resigned her employment for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e).

We next 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). To make such a determination, 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.

The claimant maintained that she quit due to safety concerns. She did not present any evidence indicating that there were pressing circumstances that prevented her from informing her employer that she would be absent. *See Consolidated Findings ## 11–13*. Thus, the claimant has not shown that she left her employment as a result of urgent, compelling, and necessitous circumstances.

Finally, we note that, although the claimant’s statements on April 3<sup>rd</sup> suggest that she quit because she believed that she was at risk of being discharged, nothing in the record substantiates her speculation that she was about to be fired, particularly where, the day before, the employer asked her to let him know when she would be coming in. *See Consolidated Finding # 9*.

We, therefore, conclude as a matter of law that the claimant has not met her burden to show that she resigned her position for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e).

The review examiner’s decision is reversed. The claimant is denied benefits for the week beginning March 31, 2024, 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 - February 24, 2025**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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.

LSW/rh