Although the claimant identified certain unsafe workplace situations, the employer had either addressed the safety issues upon learning of the claimant's concerns or proactively taken steps to address emergent safety situations. Held the claimant failed to show that he quit for good cause attributable to the employer or urgent, compelling, and necessitous reasons. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0082 9150 02

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 his position with the employer on May 27, 2024. He filed a claim for unemployment benefits with the DUA, effective June 2, 2024, which was approved in a determination issued on July 20, 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 August 27, 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 obtain additional evidence pertaining to the reason for 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 the claimant's absence from the hearing precluded him from showing he resigned his position for good cause attributable to the 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 are set forth below in their entirety:

1. The claimant worked full-time for the instant employer, a town, as a Grade 4 Operator, a union position, beginning March 18, 2024. The claimant was paid $25.92 per hour.

2. The procedure, in the event of any issue or concern, was to first speak with the Waste Water Treatment Assistant Director (WWTAD); Waste Water Treatment Director (WWTD); and then Public Works Director (PWD).

3. The claimant, when working for a prior employer, also a "small town", witnessed two employees working lose their lives when a trench collapsed in a water drain pipe replacement project.

4. The instant employer needed a pressurized hose on a metal fitting to be replaced.

5. On March 25, 2024, the WWTAD directed the claimant, who was wearing jeans and a tee shirt, and a coworker (Coworker A), to disconnect a hose, which was under pressure, which contained sodium hydroxide.

6. The claimant had not previously worked with sodium hydroxide.

7. The WWTAD showed the claimant how to disconnect the hose.

8. When the pressurized hose was disconnected, it flung around and sprayed the claimant on his lips, tongue, and face, which were injured.

9. The claimant was treated at the emergency department.

10. The claimant was unhappy he had not been provided personal protective equipment (PPE), such as a chemical suit when replacing the hose.

11. The instant employer attributed the incident to inexperience with this task, rather than a failure to maintain the waste water plant.

12. On April 8, 2024, the claimant returned to work.

13. During the claimant's absence, the WWTAD was sprayed with sodium hydroxide when working on a pressurized hose.

14. The WWTAD had not yet returned to work when the claimant returned to work on April 8, 2024.

15. The claimant inspected lines and found them to be old and brittle.

16. The claimant expressed his concerns to the WWTD, who told the claimant chemical suits would be obtained and issued.

17. The instant employer installed work stations with vinegar which negates the effects of sodium hydroxide.

18. The instant employer was replacing the roof on the waste water plant which required welding repairs.

19. As a safety measure, due to the nature of the repairs, the screening room, which had a cast iron pipe suspended from the ceiling, was designated as a fall zone.

20. The area was marked off.

21. Employees were not allowed in the screening room when the roof was being repaired.

22. On May 6, 2024, the claimant entered the screening room and saw that a 400-pound cast iron pipe had fallen.

23. The claimant observed the pipe hangers were corroded.

24. The claimant "connected the dots" and "realized" the pressurized sodium hydroxide hose incident and fallen cast iron pipe were "not acute short term safety issues fixed quickly but overall safety issues not kept up with."

25. The claimant felt safety standards were not taken seriously by small towns; he was not happy with safety protocols, including lack of PPE.

26. The claimant was not issued a chemical suit on or before May 20, 2024.

27. The claimant discussed what he considered an unsafe work conditions [sic].

28. On May 20, 2024, the claimant submitted a letter of resignation to his supervisor (Supervisor A) which stated, in part: Dear [WWTD], I am writing to formally announce my resignation from Town of [Name] Wastewater Treatment Facility, effective May 27th 2024. It is with careful consideration that I make this decision, prompted by unexpected health and safety challenges. I have deeply valued the experiences, growth, and friendships. However, given the current situation, I must prioritize my well-being. Thank you for your understanding and support. Warm regards. [Claimant]

29. On May 20, 2024, the claimant resigned his employment effective May 27, 2024, due to unsafe work conditions.

30. After submitting his resignation, the claimant was assigned to work in the lab.

31. The claimant is not trained to render workplace safety determinations.

32. The claimant did not report any health or safety concerns to the Public Works Director (PWD) prior to submitting his resignation.

33. The claimant did not report any health or safety concerns to Human Resources prior to submitting his resignation.

34. The claimant did not report his concerns to Human Resources or PWD because as a new employee he feared retaliation based upon discussions with his coworkers.

35. The claimant's physician did not advise the claimant to resign but to "do what's best for you."

36. The claimant was not subject to any disciplinary action at the time of separation.

37. At the time of separation, work was available for the claimant.

38. The Department of Labor (DOL) conducted an investigation.

39. On September 30, 2024, DOL issued a decision that OSHA standards were not violated and made recommendations to be implemented to prevent similar incidents involving corrosive liquids.

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 agree with the review examiner's legal conclusion that the claimant is entitled to benefits.

As the claimant resigned from his employment, his separation is properly analyzed under 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.

The express terms of this provision place the burden of proof upon the claimant.

The claimant resigned from his position with the instant employer because he was dissatisfied with the employer's safety protocols and believed that he was working in unsafe conditions. *See* Consolidated Findings ## 25 and 27. 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).

To determine if the claimant has carried his burden to show such conditions constituted good cause under G.L. c. 151A, § 25(e)(1), we first consider whether the claimant's workplace complaint was objectively reasonable. *See* Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 285–286 (1985) (claimant's belief that he was being harassed was not a reasonable one). Relevant to the claimant's articulated safety concerns, good cause may be shown where an employer fails to address "intolerable working conditions" such as "substandard sanitation, temperature, ventilation, or other like factors which may contribute to the physiological discomfort or demise of exposed employees. . . ." Sohler v. Dir. of Division of Employment Security, 377 Mass. 785, 789 (1979).

The claimant cited to two specific incidents in arguing that the employer was failing to address systemic shortcomings in its safety standards. The first was an incident in which he was sprayed with sodium hydroxide, and the second involved a situation where the claimant discovered a cast-iron pipe had fallen from the ceiling. Consolidated Findings ## 5, 8, and 22. When the claimant expressed his concerns about exposure to sodium hydroxide, the employer installed workstations with vinegar to mitigate the effect of the chemical and informed the claimant that it was in the process of obtaining additional personal protective equipment for its employees. Consolidated Findings ## 16 and 17. Additionally, the employer had cordoned off the room in which the cast iron pipe was suspended because it had identified the risk posed by the repairs being done on the roof of its facility. Consolidated Findings ## 18 and 19.

In our view, these steps demonstrate that the employer engaged in reasonable proactive and reactive safety measures to address the type of unsafe situations the claimant described. Absent further evidence indicating that the employer created, or failed to address, ongoing safety issues in the workplace, the claimant has not shown that unreasonable employer behavior created good cause for him to leave his employment.

Even assuming *arguendo* that the incidents identified by the claimant did create good cause for him to leave, he must also show that he made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). As discussed above, the employer proactively took steps to mitigate existing safety concerns and responded to the claimant's concerns by putting additional safety measures into place. *See* Consolidated Findings ## 5, 8, 16, 17, and 22. Even though the claimant was unsatisfied with the employer's response, he did not report any other issues to the Public Works Director or the employer's Human Resources department. Consolidated Findings ## 32 and 33. Therefore, he did not show that he took reasonable steps to preserve his employment prior to resigning or otherwise believed such efforts would have been futile.

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

The review examiner's decision is affirmed. The claimant is denied benefits for the week of June 2, 2024, 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 - February 4, 2025

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

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