

The claimant failed to present substantial evidence that medical issues, car trouble, or problems with his son forced him to resign. Nor did he make any effort to preserve his employment before leaving. Held he is disqualified under G.L. c. 151A, § 25(e)(1).

**Board of Review
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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 his position with the employer on March 29, 2024. He filed a claim for unemployment benefits with the DUA, effective April 7, 2024, which was denied in a determination issued on July 17, 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 September 11, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant left employment for urgent, compelling, and necessitous reasons 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 enter additional documentation into the record as evidence and afford the employer an opportunity to testify. Only the employer 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 decision, which concluded that the claimant's medical issues constituted urgent, compelling, and necessitous reasons for the claimant to leave his job, 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. On January 13, 2024, the claimant began working as a material handler for the employer, a home remodeling construction company.

2. The claimant was hired as a part-time employee working about 20 hours per week. About two weeks later, the employer transitioned him into full-time status, whereby he worked around 40 hours every week.
3. The claimant's rate of pay was \$18.00 an hour.
4. The claimant's direct supervisor was one of the owners of the business.
5. Between January 13, 2024, and March 14, 2024, the claimant had "several" days when he had either been late for work or had not shown up to work at all. His supervisor had notified him that, if he continued to be tardy and/or absent, he would be suspended and possibly terminated.
6. On March 13, 2024, the claimant worked as scheduled. That day, he delivered "light" materials and not anything heavy.
7. On March 14, 2024, the claimant texted his supervisor before the beginning of his shift stating that he was unable to report to work that day because he hurt his back. He stated that the back pain was because he had fallen off from a tailgate.
8. On March 18, 2024, the claimant reported to work as scheduled.
9. On March 19, 2024, the claimant was scheduled to work from 7:00 a.m. The claimant did not report to work by 7:00 a.m. His supervisor called him to ask why he was not at work. He did not pick up. At 8:00 a.m., he texted his supervisor stating that he was not coming to work that day because he had to "fix" some issues with his son.
10. On March 20, 2024, the claimant reported to work as scheduled. That day, he delivered "20- 2x6x8 studs/8- 2x6x16/ and LVL hangers."
11. On March 21, 2024, the claimant was scheduled to work from 7:00 a.m., but he did not report to work. The supervisor tried to contact him throughout the day, but he did not respond. At 6:18 p.m., the claimant texted the supervisor stating that he was sorry he was unable to work that day. He stated his alarm did not ring in the morning, and that he was also having back issues.
12. On March 22, 2024, the claimant was scheduled to work, but he did not report to work. His supervisor texted him in the morning asking him if would work that day. He replied that he would not work that day.
13. The claimant last worked for the employer on March 20, 2024.
14. On March 29, 2024, the claimant texted the supervisor asking for his check for two days worked. The claimant collected his final check from the supervisor's home. The supervisor asked him how he was doing and if he wanted to return

to work. The claimant stated that he was having car issues and issues with his son, and was not sure he could make it to work on time. The supervisor told him he was welcome to return to work whenever he was able to work again.

15. Effective March 29, 2024, the claimant quit his job for unknown reasons.
16. Prior to quitting, he had complained about different things affecting his ability to work, including back issues, issues with his car, issues with his son, etc.
17. Apart from the March 14, 2024 text message in which he stated that he had fallen from the tailgate, the claimant did not report any other work-related injuries to the employer when he worked there. He never made any incident reports.
18. The claimant never requested to use any sick time off, or a leave of absence.
19. The claimant never requested any light duty work.
20. The employer would have provided the claimant with light duty work if he had made that request.
21. Had the claimant officially reported work related injuries, the employer would have initiated a workers' compensation process for him.
22. The claimant applied for unemployment insurance (UI) benefits, effective April 7, 2024.
23. On April 11, 2024, the claimant was treated for "Acute pain of left shoulder." He was referred to physical therapy and occupational therapy. During his hospital visit that day, he reported "left shoulder pain and low back pain" which he said came "after he fell from a pick-up truck on 3/21/2024 around 9[:00 a.m.]." He stated that he did not previously seek medical attention because of "[h]ealth insurance issues."
24. On July 23, 2024, the claimant texted the supervisor, asking him if there was any work available. The supervisor told him there was no work available.

Credibility Assessment:

At the initial hearing held on August 7, 2024, only the claimant attended. However, at the remand hearing on October 25, 2024, two of the employer's business owners were present, while the claimant did not attend.

The claimant's testimony about his separation from the employer lacked specificity and detail. He acknowledged that, having worked there for only a few months, he could not recall many aspects of the job. While he claimed to have left due to health

issues, he did not disclose other factors that affected his ability to work, such as car troubles and issues involving his son.

In contrast, the employer's witnesses provided a thorough and consistent account of the claimant's separation. The supervisor, in particular, shared a detailed firsthand account of conversations with the claimant leading up to his termination. They also presented text messages sent by the claimant to the supervisor, which documented his absences and the various reasons he gave for them. The employer's testimony, supported by detailed evidence, is deemed credible.

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 legal conclusion that the claimant is eligible for benefits.

Because the claimant resigned from his employment, his eligibility for benefits is governed by the following provisions under G.L. c. 151A, § 25(e), which provides, in pertinent part:

[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.

These statutory provisions place the burden of proof upon the claimant.

There is nothing in the record to suggest that the employer did anything to cause the claimant to resign. See Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980) (to establish good cause attributable to the employer under G.L. c. 151A, § 25(e)(1), the focus is on the employer's conduct and not on the employee's personal reasons for leaving). Therefore, the claimant did not quit for good cause attributable to the employer.

We next consider whether the claimant separated for urgent, compelling and necessitous reasons within the meaning of G.L. c. 151A, § 25(e). Although Consolidated Finding # 15 states that the claimant quit his job for unknown reasons, other findings suggest that the claimant may have left work due to health issues, transportation issues, or matters involving his son. See Consolidated Findings ## 7, 9, 11, 14 and 16. "[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).

As the review examiner noted in her credibility assessment, the claimant asserted that he left for health reasons. Specifically, the claimant testified during the initial hearing that he left his employment due to issues with his shoulder, which arose from lifting heavy lumber at work, and the review examiner credited that testimony. *See* Remand Exhibit 1.¹ After remand, however, the review examiner no longer credited the claimant’s testimony, finding instead that he quit his job for unknown reasons. *See* Consolidated Finding # 15. 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). “The test is whether the finding is supported by ‘substantial evidence.’” Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations omitted). “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” *Id.* at 627–628, *quoting* New Boston Garden Corp. v. Board of Assessors of Boston, 383 Mass. 456, 466 (1981) (further citations omitted). Based upon the record before us, we believe that the review examiner’s assessment is reasonable in relation to the record and should not be disturbed on appeal.

Here, the claimant submitted documentation to show that he sought medical treatment for acute left shoulder pain, and that he had had been referred to physical therapy and occupational therapy. *See* Consolidated Finding # 23; *see also* Remand Exhibit 7.² However, nothing in the record, including these medical notes, demonstrates that the claimant needed to separate from employment on March 29, 2024, due to shoulder pain or any other health issue, including back pain. Although the claimant’s job as a material handler may have required him to lift heavy objects, and the claimant occasionally informed the employer that he missed work due to back issues, the medical documentation in the record does not indicate that the claimant received any medical advice to stop working due to either shoulder or back pain. *See* Consolidated Findings ## 1, 6–7, and 11; *see also* Remand Exhibit 7. There is also nothing in these consolidated findings to show that the claimant’s shoulder or back pain existed to such a degree that it substantially hindered his performance or rendered him completely unable to continue working for the employer. We note that the claimant continued to work for some time after hurting his back on March 14, 2024. *See* Consolidated Findings ## 7–8, and 10. While the claimant established that he experienced some medical issues during his employment, he has not shown that they constituted an urgent, compelling, and necessitous reason to leave his job.

Additionally, because the claimant never mentioned car trouble or issues with his son in the first hearing as a reason for leaving his job, and he failed to participate in the remand hearing, we do

¹ Remand Exhibit 1 is the hearing decision, dated September 11, 2024.

² Remand Exhibit 2 consists of the claimant’s medical records. Although not explicitly incorporated into the review examiner’s findings, it is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

not have any details about these matters. Consequently, there is not substantial evidence that these circumstances caused the claimant to separate for urgent, compelling, and necessitous reasons.

Even if circumstances beyond the claimant's control drove the decision to resign, the claimant must also show that he first made reasonable efforts to preserve his employment. *See Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development*, 66 Mass. App. Ct. at 766.

The claimant did not make a reasonable effort to preserve his employment. The claimant occasionally informed his employer that he missed work due to back issues. *See Consolidated Findings ## 7 and 14.* However, in those instances, the claimant merely explained why he failed to report for work and nothing more. He did not report any work-related injuries to the employer when he worked there, did not file any incident report, never requested to use sick time off or a leave of absence, and never requested light duty work. Consolidated Findings ## 17–19.

We, therefore, conclude as a matter of law that the claimant voluntarily left his employment and is ineligible for benefits under G.L. c. 151A, § 25(e)(1), because he did not establish good cause attributable to the employer or urgent, compelling, and necessitous circumstances that caused him to leave.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning April 7, 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 - January 16, 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.

JMO/rh