

**A claimant, whose job duties required him to drive the employer’s vehicle to varying work locations, is disqualified from receiving benefits, where he lost his license for refusing to take a breathalyzer test following a stop for alleged OUI, and subsequently pled guilty to the charges. Held the claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because his actions caused the statutory impediment to his unemployment.**

**Board of Review  
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**Issue ID: 0083 3818 48**

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 July 15, 2024. He filed a claim for unemployment benefits with the DUA, effective August 4, 2024, which was denied in a determination issued on October 10, 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 affirmed the agency’s initial determination and denied benefits in a decision rendered on November 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 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 circumstances surrounding the claimant’s separation. Only the claimant 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 caused his own unemployment because he was stopped on suspicion of operating his motor vehicle under the influence and his driver’s license was suspended, 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 as a Plant Operator for the employer, a water treatment company, from 1/1/13 until 7/15/24 when he became separated.

2. The claimant became separated as a result of his driver's license being suspended.
3. The claimant's driver's license was suspended as a result of a suspected OUI.
4. On 7/14/24, the claimant was stopped by the police in Massachusetts after he had come from free diving in the ocean that day. There were two police cruisers at the scene. One police officer believed the claimant was operating under the influence of alcohol while the other officer believed he was under the influence of narcotics. The claimant was ultimately arrested on suspicion of OUI. The claimant's vehicle was impounded. The officer told the claimant that his license would be suspended for suspicion that he was operating under the influence. The officer took possession of the claimant's license at that time. The claimant declined to submit into evidence any documentation, such as court complaint, docket sheet, police report, citations or communication from the Registry of Motor Vehicles, explaining the reason(s) the police officer stopped the claimant on July 14, 2024, as invited to do so by the Board of Review.
5. After being pulled over on July 14, 2024, the claimant was asked to perform a sobriety test, which he refused. The claimant was asked to perform a breathalyzer to determine his blood alcohol concentration, which he refused. The claimant was not asked to perform tests conducted by a Drug Recognition Expert.
6. The claimant's primary duty with this employer was driving to water treatment facilities to perform water treatment. He also was required to be on call 24/7, on at least two days a month.
7. The claimant spoke first to his attorney and then notified his employer of the situation.
8. The claimant never requested other work that did not require the use of his license.
9. The employer told the claimant that if he could not perform the work due to the loss of his license, it would be best if they ended his contract, and he could reapply for work when his license was reinstated.
10. The claimant was awaiting a compliance hearing on 11/19/24 and then trial thereafter.
11. The claimant initially did not enter a plea to the charges against him and decided to have a full jury trial. He subsequently decided after speaking with his attorney not to go forward with the jury trial and instead plead guilty to all charges.

12. The current disposition of the claimant's case is as follows; the claimant pleaded guilty to OUI, he is to serve one year of probation, 45-day loss of license and enter the 24D first offender program with a 24Q evaluation. The RMV sent the claimant a letter informing him his loss of license is for 90 days. The claimant had also been charged with leaving the scene with property damage for clipping another vehicle's mirror. The disposition for this charge is one year probation to be served concurrently with the other charges. The claimant testified to have probation documents in his possession, but declined to submit into evidence any documentation, such as court docket, judgement, probation contract, or other official document explaining the disposition of his case as invited to do so by the Board of Review.
13. Had the claimant's license not been suspended, the employer would have allowed the claimant to continue working. The separation occurred as the result of the claimant's loss of driver's license.
14. The claimant provided medical documentation after the remand hearing, which has been marked as Remand Exhibit 6 and uploaded under the appeal case folder dated 3/5/25.

### 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 consolidated findings of fact support the conclusion that the claimant is not entitled to benefits.

The essential duties of the claimant's job required him to have a valid driver's license. *See* Consolidated Finding # 6. The claimant's driver's license was suspended because he refused to perform a breathalyzer test after being pulled over on suspicion of operating a vehicle while under the influence. Consolidated Findings ## 4 and 5. He subsequently pled guilty to that charge. Consolidated Finding # 12. Although the employer did technically discharge the claimant, it was the claimant's actions in driving his vehicle while intoxicated and refusing a field sobriety test that rendered him unable to continue his employment. *See* Consolidated Findings ## 4, 5, 9, and 12. Thus, he created the statutory impediment to his continued employment. In such cases, the Supreme Judicial Court has explained:

The language of G.L. c. 151A, § 25, and our cases interpreting that language, demonstrate that the word 'voluntarily,' as used in § 25(e)(1), is a term of art that must be read in light of the statutory purpose of 'provid[ing] compensation for those who 'are thrown out of work through no fault of their own.' . . . Thus, for example, in Rivard v. Dir. of Division of Employment Security, . . . we concluded that 'a person who causes the statutory impediment that bars his employment leaves his employment 'voluntarily' within the meaning of § 25(e)(1) when the employer

realizes the impediment and terminates the employment.’ As Rivard demonstrates, in determining whether an employee left work ‘voluntarily’ for purposes of § 25(e)(1), the inquiry is not whether the employee would have preferred to work rather than become unemployed, . . . but whether the employee brought his unemployment on himself.

Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002, 1003 (1985) (rescript opinion) (the Court upheld the denial of unemployment benefits to a claimant who was unable to work, because his driver’s license was suspended for a year following a conviction for driving while intoxicated). (Citations omitted.)

G.L. c. 151A, § 25(e)(1), 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.

The explicit language of the foregoing provision places the burden upon the claimant to establish that he left his job either for good cause attributable to the employer or for urgent, compelling, and necessitous reasons. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

To determine whether 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). There is no indication from the record that the employer did or failed to do something that gave the claimant a reason to quit his job. Accordingly, the claimant did not separate from his employment for good cause attributable to the employer.

We also consider whether the record shows urgent, compelling, and necessitous circumstances. At the initial hearing, the claimant asserted that the police may have suspected that he was under the influence of an intoxicant on July 14, 2024, because of the effects of a medical condition. *See* Consolidated Finding # 14. However, he failed to show that his condition prevented him from performing a breathalyzer test or otherwise compelled him to plead guilty to the charge of operating a vehicle under the influence. *See* Consolidated Findings ## 4, 5, and 12. Thus, the claimant’s separation is solely attributable to his own actions. In effect, he “voluntarily” left his job and “brought his unemployment on himself.” *See Olmeda*, 394 Mass. 1002.

We, therefore, conclude as a matter of law that the claimant is deemed to have voluntarily separated from his employment and is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week of August 4, 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.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 25, 2025**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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