

The claimant was discharged because he failed to complete his required background check and, as a result, did not obtain the required suitability letter from the Department of Early Education and Care. As he disregarded repeated reminders from the employer and failed to submit the necessary documentation by the applicable deadline, his own inaction rendered the employer legally unable to continue his employment. Therefore, his separation is deemed to be voluntary and disqualifying pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0083 6984 19

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 August 1, 2024. He filed a claim for unemployment benefits with the DUA, effective September 8, 2024, which was approved in a determination issued on October 3, 2024. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and awarded benefits in a decision rendered on November 26, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant had not engaged in deliberate misconduct in wilful disregard of the employer's interest or knowingly violated a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 did not act in wilful disregard of the employer's expectation that he complete a state-mandated background check because he made some effort to comply with the requirement, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The employer is a non-profit human services organization that is licensed and or/funded by the Department of Early Education and Care (EEC).

2. The claimant had a criminal case that was ongoing between early 2021 and March 2023.
3. On 4/3/2023, the employer issued the claimant an offer letter, stating in part, “all prospective employees will be required to pass a criminal offender record [i]nquiry (CORI) and potentially fingerprinting (based on division) before being hired....” The claimant electronically signed the job offer on 4/4/2023.
4. The employer hired the claimant conditionally, pending his background check which required him to provide his fingerprints and obtain a suitability letter from the EEC deeming the claimant suitable to work for the employer.
5. The claimant worked as a full-time employee for the employer between 4/10/2023 and 8/31/2024, when he separated.
6. The employer maintains a “Background Checks” policy, stating that “candidates who require fingerprinting may be offered conditional employment pending the fingerprinting process. Anyone who does not comply with the fingerprinting requirement will be considered ineligible to work.”
7. The purpose of the “Background Checks” policy is to comply with the requirements of the EEC and to keep clients safe.
8. The “Background Checks” policy is included in the employer’s policies and procedures, for which the claimant signed an acknowledgement form on 4/6/2023.
9. The employer expected the claimant to provide fingerprints and obtain a suitability letter from the EEC.
10. The purpose of this expectation was to comply with the requirements of EEC and to keep clients safe.
11. The claimant was aware of this expectation.
12. The claimant’s immediate supervisor was the program director. The claimant’s upper-level manager was the assistant director of residential programs.
13. Effective 2/1/2024, the EEC updated its policy that all candidates in conditional status for more than 120 days without a final background check suitability determination from the EEC will not remain employed. Candidates in conditional status who do not respond to EECs request for additional information within 120 days will be given a suitability determination of “Not Suitable” due to their failure to respond. Candidates who have already been in contact in an effort to complete their application will be granted a 30-day extension.

14. During an audit conducted on 2/6/2024, the employer learned that the claimant had not provided his fingerprints necessary to complete his background check.
15. On 2/6/2024, the employer emailed the claimant that he was not fingerprinted, that his program is up for license renewal, and that the claimant's license cannot be renewed until he gets his fingerprints done.
16. On 2/15/2024, the human resources compliance administrator emailed the claimant at his work email address about his conditional employment status pending fingerprinting and that he was not fingerprinted.
17. On 2/21/2024, the claimant provided fingerprints for the EEC.
18. The human resources compliance administrator emailed the claimant at his work email address on 4/30/2024, 5/7/2024, and 5/20/2024 to contact the EEC directly because his fingerprinting results were pending.
19. In April 2024, the claimant provided the employer with a receipt from providing fingerprints for the EEC for a second time.
20. In approximately mid-July 2024, the EEC needed additional information from the claimant and gave him thirty (30) days to provide it.
21. In early August, the claimant provided some of the documentation the EEC required such as court dockets, police reports, and recommendation letters. The claimant completed submitting these materials on 8/19/2024.
22. By 8/16/2024, the claimant had not provided all of the requested information to the EEC.
23. On 8/16/2024, the employer received a suitability letter from the EEC that the claimant was not suitable and not approved to work for the employer and must be terminated within fourteen (14) days of 8/16/2024.
24. The claimant's last day worked was 8/17/2024, when he was suspended.
25. On or around 8/20/2024, the director of human resources sent the claimant the 8/16/2024 suitability letter from the EEC, which the claimant received.
26. On 8/20/2024, the claimant provided fingerprints for the EEC.
27. By 8/30/2024, the claimant did not have a letter from the EEC deeming him suitable to work for the employer.

28. On approximately 8/31/2024, the director of human resources terminated the claimant's employment because he did not have a suitability letter from the EEC deeming him suitable to work for the employer.
29. The claimant was a union member and filed a grievance, which the union denied.
30. The claimant did not regularly check his work email address. The employer did email the claimant on his personal email about his fingerprints, which the claimant received.

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 findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. There appears to be a typographical error in Finding of Fact # 21, which states in relevant part that the claimant submitted some documentation to the EEC in early August and completed submitting the required materials by August 19, 2024. Consistent with the claimant's uncontested testimony at the hearing, we believe that the review examiner intended to find that the claimant began submitting documents to the EEC in early September, 2024, and completed that process by September 19, 2024. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is entitled to benefits.

The review examiner initially applied G.L. c. 151A, § 25(e)(2), the portion of the law governing eligibility for benefits where claimants are discharged, because the parties' testimony indicated the employer initiated the claimant's separation. Although the employer did technically discharge the claimant, it was the claimant's own failure to comply with the EEC requirements that rendered him unable to continue his employment. *See Findings of Fact ## 20–23, and 28.* 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. (Citations omitted.)

Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (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).

As the claimant's inaction effectively caused the statutory impediment to continued employment, his eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), 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.

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).

In order to continue working for the instant employer, the claimant was required to complete a background check and obtain a suitability letter from the EEC by August 30, 2024. Findings of Fact ## 9–11, and 23. Between February 6, 2024, and May 20, 2024, the employer sent five reminders to the claimant's work and personal email addresses, first informing him to submit his fingerprints to the EEC and then instructing him to contact the EEC because the results of his background check remained pending. Findings of Fact ## 15, 16, and 18. These reminders, which were admitted into evidence as Exhibit 12, made it clear that it was incumbent upon the claimant to provide the EEC with this information.¹ The employer again alerted the claimant that he needed to obtain a suitability letter after the employer received a notice that the EEC had determined him not suitable to continue working for the employer. Findings of Fact ## 23 and 25.

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). In this case, there is no evidence that the employer did or failed to do something that gave the claimant a valid reason to quit his job. Thus, he did not separate from his employment for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1).

Our standard for determining whether a claimant's reasons for leaving work are urgent, compelling, and necessitous has been set forth by the Supreme Judicial Court. We must examine the circumstances in each case, and evaluate "the strength and effect of the compulsive pressure

¹ Exhibit 12, while not explicitly incorporated into the review examiner's findings of fact, is part of the unchallenged evidence introduced at the hearing and placed into 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).

of external and objective forces” on the claimant to ascertain whether the claimant “acted reasonably, based on pressing circumstances, in leaving employment.” Reep v. Comm’r of Department of Employment and Training, 412 Mass. 845, 848, 851 (1992). Nothing in the record supports a conclusion that the claimant resigned his position for urgent, compelling, and necessitous reasons.

The claimant contended that he had not received the employer’s reminder emails informing him to complete the EEC background check process because he did not check his work email. Finding of Fact # 30. Specifically, the claimant testified that he would not check his work email for multiple weeks at a time because he was working on the employer’s program floor.² However, as discussed above, the employer sent the claimant multiple reminder emails about the EEC requirements over the course of a three-and-a-half-month period. Findings of Fact 15, 16, and 18. Additionally, the claimant confirmed at the hearing that the reminders had also been sent to his personal email address. Finding of Fact # 30. As the claimant received ample notice that the results of the required background check remained pending, he has failed to demonstrate that he lost his job due to any factor other than his own lack of effort in complying with the EEC requirements. *See* Findings of Fact ## 20–22, and 30. 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 claimant voluntarily left his employment without good cause attributable to the employer, or urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner’s decision is reversed. The claimant is denied benefits for the week of September 8, 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



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)**

² The claimant’s uncontested testimony in this regard is also part of the unchallenged evidence introduced at the hearing and placed into the record.

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/rh