

The claimant was approved to take time off by the employer to address a family emergency. When the claimant's return flight was cancelled, he contacted the employer to inform them that he would not be at work. Because the claimant notified the employer of his absence and there was no delay in doing so, the Board held that the claimant did not engage in misconduct and is entitled to benefits pursuant to G.L. c. 151A, § 25(e)(2).

**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 7710 00

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 reverse.

The claimant separated from his position with the employer on June 26, 2024. He filed a claim for unemployment benefits with the DUA, effective September 15, 2024, which was approved in a determination issued on October 22, 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 November 14, 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 afford the claimant an opportunity to testify and present additional evidence. 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 abandoned his job when he failed to report for two of his scheduled shifts or notify the employer of his absence, 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 was employed full time as a stocker for the employer, an auto parts retail store, most recently from December 11, 2023, and June [26], 2024, when he separated.
2. The claimant's supervisor was the counter manager (supervisor). The claimant's upper-level manager was the human resources manager (manager).
3. [Owner] is the owner of the store.
4. The claimant worked Monday through Friday from 8:00 a.m. to 5:00 p.m. each week. The claimant would sometimes work on Saturday if there were overtime hours available.
5. The work schedule is made by the supervisor each week. The supervisor then submits the schedule to the manager who approves and finalizes the work schedule.
6. The claimant receives his work schedule by viewing it when it is posted at the employer's facility.
7. The claimant's mother previously had a severe stroke and was diagnosed with dementia.
8. On or around June 18, 2024, the claimant's mother had a minor heart attack.
9. The claimant's mother resided in a nursing home in [City], Massachusetts and the claimant wanted to find a nursing home for her in Florida.
10. On June 19, 2024, the claimant decided he needed to visit his mother and travel to Florida to search for a new nursing home for her.
11. On June 19, 2024, the claimant informed the supervisor that he had a family emergency and needed to take time off to care for his mother. The claimant informed him that he would be out on June 20, 2024, and June 21, 2024. The claimant believed he would be back to work on Monday June 24, 2024. The claimant informed the supervisor that if he was not able to return for June 24, 2024, he would contact him on June 24, 2024, and let him know.
12. The supervisor told the claimant to inform the manager of his need to take time off.
13. On June 19, 2024, the claimant informed the manager in person, in his office, that he had to take time off to care for his mother. The manager approved the claimant's time off for June 20, 2024, and June 21, 2024.
14. The claimant and the manager agreed that he would contact the employer if he was not going to be able to return to work on Monday, June 24, 2024.

15. The claimant and the manager did not agree that the claimant would contact the manager on Sunday June 23, 2024.
16. The claimant informed the supervisor the manager approved the claimant's time off.
17. The supervisor also discussed the claimant's request for time off with the manager, who approved the claimant's time off.
18. The claimant travelled to Florida to look for nursing homes for his mother.
19. The claimant did not contact the manager on Sunday June 23, 2024, because he did not agree with the manager he would do so.
20. The claimant had a scheduled return flight from Florida on June 24, 2024, and planned on returning to work after his flight landed on June 24, 2024.
21. On June 24, 2024, the claimant's flight was cancelled.
22. On June 24, 2024, the claimant contacted the supervisor and the manager to inform them that his flight was cancelled, and he would not be to work until June 26, 2024, the day his flight was rescheduled for. The manager replied to the claimant stating, not to "worry about it."
23. The claimant did not contact the manager on Tuesday June 25, 2024.
24. The claimant likely contacted the supervisor on June 25, 2024, because he kept in contact with the supervisor approximately every other day throughout his time off between June 20, 2024, and June 26, 2024, to keep him updated on when he would be able to return to work.
25. The claimant was not placed on the schedule to work the week of June 24, 2024, through June 30, 2024.
26. The claimant was never informed that he would be discharged from employment for not reporting to work between June 20, 2024, and June 26, 2024.
27. On June 26, 2024, the claimant travelled back to Massachusetts and went into work after his flight arrived.
28. When the claimant arrived at work, the claimant spoke with the manager who discharged the claimant from employment. The manager did not tell the claimant why he was no longer employed by the employer. The claimant began to yell at the manager.

29. On June 26, 2024, at 6:09 p.m., the claimant called the owner regarding his discharge. The owner informed the claimant that his services were no longer needed by the employer. The claimant did not speak with the owner regarding his leave prior to their conversation on June 26, 2024.
30. The manager uses the slang word “bump” to reference whoever he is speaking to. “Bump” is not a specific individual. The manager used the term “bump” to refer to the supervisor in a text message exchange between the manager and the supervisor regarding the claimant’s request to take time off between June 20, 2024, and June 27, 2024. The date of the text message is unknown.

Credibility Assessment:

The claimant’s testimony during the remand hearing is deemed to be more credible than that of the employer’s. The employer maintained throughout the original hearing that the claimant informed the manager he would contact him on Sunday, June 23, 2024, regarding his return to work. The manager did not hear from the claimant until June 26, 2024, after he was discharged. The claimant provided detailed testimony at the remand hearing that he was not supposed to contact the employer until June 24, 2024, if he was not able to return to work on that day. The claimant testified that not only did he speak with the manager on June 24, 2024, who told him “not to worry about it” but that he spoke with the supervisor every other day while he was away to keep him informed of his status. A note authored by the supervisor was entered into evidence stating that the claimant informed him the claimant would be out of work traveling out of state for a family emergency and that he would not return to work until later the next week. The claimant also presented the supervisor as a witness, corroborating the claimant’s testimony, that his days off were approved by him and the manager, that the manager spoke with the claimant regarding the fact he was not returning to work on June 24, 2024, and that the claimant was approved to remain out of work from June 24, 2024, until June 26, 2024, when he was scheduled to return from Florida. The claimant and the witness provided sequestered consistent testimony that the claimant was never informed he would be discharged for not returning to work prior to June 26, 2024. Weighing the testimony given at the original hearing and the remand hearing along with the evidence, it is concluded the claimant’s testimony is more credible than that 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 ineligible for benefits.

The first question we must decide is whether the claimant's eligibility for benefits is to be decided under G.L. c. 151A, § 25(e)(1), due to job abandonment, or as a discharge under G.L. c. 151A, § 25(e)(2). *See 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)).

The events unfolded when the claimant's mother, who was suffering from poor health, had a minor heart attack on June 18, 2024. *See Consolidated Findings ## 7–9*. The next day, the claimant informed the manager and his supervisor that he had a family emergency, that his mother's health was declining, and that he needed to travel to Florida to find a nursing home that could address her needs. The employer approved the claimant's request to take time off on June 20th and 21st, 2024. *See Consolidated Finding ## 10–13, 16, and 17*. Both the claimant and the employer further agreed that, if the claimant was unable to return to work, he would contact the manager and the supervisor on Monday, June 24, 2024. *See Consolidated Finding ## 11 and 14*. The employer did not schedule the claimant to work the week of June 24, 2024. *See Consolidated Finding # 25*.

The claimant traveled to Florida and had a return flight scheduled for June 24, 2024. *See Consolidated Finding ## 18 and 20*. Upon confirmation that his flight was cancelled, the claimant contacted the manager and the supervisor and informed them that he would not be able to report for work on June 24, 2024. *See Consolidated Findings ## 21 and 22*. He remained in contact with his supervisor about his status and when he would be able to return to work. *See Consolidated Finding # 24*. On June 26, 2024, the claimant travelled back to Massachusetts and reported directly to the manager. *See Consolidated Findings # 27*.

Nothing in the record indicates the claimant abandoned his job or failed to notify the employer of his absence. Rather, it was the employer's actions which caused the claimant to separate from his employment. When the claimant spoke to the owner of the company regarding his termination, the owner stated that the employer no longer required his services. *See Consolidated Findings ## 28 and 29*. These facts establish that the employer discharged the claimant.

Since the claimant was discharged from employment, his eligibility for benefits is governed by G.L. c. 151A, § 25(e)(2), 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 . . . (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. . . .

“[T]he grounds for disqualification in § 25(e)(2) are considered to be exceptions or defenses to an eligible employee's right to benefits, and the burdens of production and persuasion rest with the

employer. Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

As a threshold matter, the employer must demonstrate that the claimant's termination was attributable to some sort of misconduct. At the initial hearing, the employer asserted that the claimant did not contact the employer on June 23, 2024, as directed to do so and did not call out or report for his scheduled shifts on June 24th and 25th, 2024.

However, after remand, the consolidated findings show that the claimant followed the supervisor's directive and obtained the manager's approval for his absence. *See Consolidated Findings ## 12, 16, and 30.* The findings also reflect that the claimant complied with the manager's directive to contact him on June 24, 2024, if he was unable to return to work. *See Consolidated Findings ## 14, 15, 19, and 22.* Nothing in the record suggests that there was any delay on behalf of the claimant in reaching out to the employer to inform it of his status. In fact, the evidence shows that the claimant remained in constant contact with the employer. *See Consolidated Finding ## 22 and 24.* Therefore, the employer has not shown that the claimant engaged in misconduct.

We, therefore, conclude as a matter of law that the claimant did not voluntarily leave his employment. We further conclude that the employer has not met its burden to show that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, within the meaning of G.L. c. 151A, § 25(e)(2).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending June 29, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 25, 2025



Paul T. Fitzgerald, Esq.
Chairman



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

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.

DY/rh