

The claimant became separated for job abandonment after being incarcerated for driving under the influence and additional criminal charges. The record does not show that she separated from her job involuntarily due to the effects of alcoholism, as she did not show that she had been making sincere efforts to control the alcoholism at the time of the incident that caused her separation. Consequently, the separation is voluntary, and she is denied benefits under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0334-FHJR-8LFL

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 was separated from her position with the employer on October 31, 2024. She filed a claim for unemployment benefits with the DUA, effective November 3, 2024, which was denied in a determination issued on December 17, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on February 21, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant separated involuntarily for urgent, compelling, and necessitous reasons, and, thus, was entitled to benefits pursuant to 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 take additional evidence regarding the circumstances that led to the claimant's separation. Both parties 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, including the recorded testimony and evidence from the initial and remand hearings, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's separation for being absent from work without calling the employer for four consecutive days resulted from her being an alcoholic and was, thus, involuntary, 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. On July 17, 2023, the claimant started working full-time for the employer, a human services provider, as a Skills Trainer. The claimant worked a hybrid schedule for the employer. The claimant usually worked for the employer remotely on Monday and Wednesday through Friday. The claimant usually worked for the employer on-site on Tuesdays. The claimant sometimes worked for the employer on Saturdays. The claimant was scheduled to work for the employer from 8 a.m. to 4 p.m.
2. The claimant was paid \$22.50 per hour.
3. The claimant's supervisor was the Team Lead.
4. The employer maintains an Attendance and Punctuality Policy outlining that consistent attendance is required at the employer's establishment. The policy lists in part the following information regarding absences: "Employees who fail to notify their supervisors will result in an unexcused absence. Employees, who fail to report to work (including, per-diem and respite assignments) without notifying their manager for three or more consecutive work shifts, will be considered to have abandoned their job and voluntarily resigned. Employees who have abandoned their job are not eligible for rehire. Failure to call in for any absence may result in disciplinary action, up to and including termination of employment."
5. The claimant received the employer's Attendance and Punctuality Policy.
6. The claimant's last date of work performing tasks for the employer was Saturday, October 26, 2024.
7. On Saturday October 26, 2024, the claimant was arrested in New Hampshire and charged with Driving Under the Influence (DUI) and disobeying the police. At this time, the claimant was under the influence of alcohol. The arrest paperwork lists that the claimant had refused to participate in field sobriety testing. The claimant does not remember refusing to participate in the field sobriety testing. The claimant's driver's license privileges were suspended in New Hampshire due to the claimant refusing to take the sobriety test. The claimant's Massachusetts driving license privileges were not suspended as the offense happened in New Hampshire (as of the date of the hearing).
8. The claimant is an alcoholic. The claimant being arrested for DUI was caused in connection with the claimant being an alcoholic.
9. On Sunday, October 27, 2024, the claimant had a telephone conversation with her boyfriend. During this telephone conversation, the claimant requested for her boyfriend to contact the employer's establishment to inform the employer that she had been detained. In response to this request, the claimant's boyfriend had informed the claimant that he would try to contact the employer on the claimant's behalf.

10. The claimant did not directly contact the employer when she was arrested to notify the employer that she was detained and was going to be absent from work as the claimant was detained and had limited communication access.
11. The claimant was initially scheduled to work for the employer from Monday, October 28, 2024, through Friday, November 1, 2024.
12. The claimant was absent from work Monday, October 28, 2024 through Wednesday, October 30, 2024, as the claimant was still detained. The claimant was a no-call/no-show for her work shifts on these dates. The claimant did not notify the employer about her absence from work on these dates directly as she had limited communication while being incarcerated for the arrest. The claimant's boyfriend also did not contact the employer to inform the employer that the claimant had been detained.
13. The claimant's absence from work without notifying the employer was having a negative impact on the employer's establishment.
14. On October 31, 2024, the employer mailed a letter to the claimant writing in part:

"As of the date of this letter, you have not worked since Saturday, October 26, 2024. The last contact we had with you was on Friday, October 25, 2024, when you spoke with your supervisor, [team leader].

Per [employer's] Attendance and Punctuality Policy (HR # 14), employees who fail to report to work without notifying their manager for three or more consecutive work shifts, will be considered to have abandoned their job and voluntarily resigned. Employees who have abandoned their job are not eligible for rehire.

In accordance with our policy noted above, we are terminating your employment effective today, October 31, 2024 and it will be considered a voluntary resignation. Please return the following [employer] property, immediately, to the human resources department located at [Location A].

- Agency issued laptop
- Agency issued MiFi

If the above items are not returned by Wednesday, November 6, 2024, [employer] may pursue all avenues [sic] to recover the equipment, including legal action.

Your final paycheck, including accrued but unused earned time, will be paid in the paycheck dated November 1, 2024.

You will receive information in the mail in the next few weeks regarding continuation under COBRA of any health care benefits in which you and your dependents are enrolled. Your health benefits will end effective October 31, 2024.

Per Massachusetts requirements, we have enclosed a pamphlet entitled “How to Apply for Unemployment Insurance Benefits.” Please note that employees who resign their position may not be eligible for benefits.”

15. Prior to the employer issuing the October 31, 2024, letter to the claimant, the claimant had not contacted the employer to request a leave of absence from work. The employer would have been willing to provide the claimant with a leave of absence from work in the event the employer was aware the claimant was arrested and being detained.
16. On November 1, 2024, the claimant was released from incarceration and also placed in an out-patient treatment program for mental health and alcoholism through the [Program X] and [Program Y] Programs.
17. On November 1, 2024, the claimant read and received the October 31, 2024, letter from the employer regarding the claimant’s job abandonment and separation from work.
18. On November 1, 2024, the claimant contacted the employer after she was released from incarceration to inquire about getting her job back.
19. On November 1, 2024, the claimant sent the Team Leader the following text message: “I’m not sure if I still have a place at [employer]. With everything that was going on at home I got myself into some trouble over the weekend and now I am with an outpatient mental health program. I wasn’t able to reach out and it wasn’t by choice. If I can’t come back I completely understand. When you have time can you please let me know what’s going on thank you.”
20. The claimant did not disclose to the employer after she was released from incarceration for the arrest that she specifically had been arrested as the claimant was concerned that this may impact her eligibility to return to the employer’s establishment in the future.
21. The employer could not accommodate the claimant’s request to have her job back after the claimant did contact the employer on November 1, 2024.
22. The criminal charges are still pending against the claimant (as of the date of the initial hearing).
23. The claimant did not specifically inform the employer that she was resigning from her job.

24. The employer did not do anything wrong that caused the claimant to stop reporting to work.
25. The claimant quit her job at the employer's establishment because the claimant stopped reporting to work after October 26, 2024, and was absent from work from October 28, 2024, through October 31, 2024, without notifying the employer as the claimant was arrested on October 26, 2024, and charged with DUI caused by the claimant being an alcoholic and was not released until November 1, 2024.
26. The claimant's alcoholism is connected to why the claimant has been separated from work. At the time the claimant was arrested, the claimant had no control over her alcoholism [sic].
27. The claimant continues to participate in an outpatient program for alcoholism and mental health (as of the date of the initial hearing).
28. On November 4, 2024, the claimant filed an initial unemployment claim effective the week beginning November 3, 2024.
29. The claimant has submitted a complete and legible copy of the "arrest paperwork" to the DUA during the Remand Hearing Session of the document entered into evidence as Hearings Exhibit #1 during the initial hearing session. This paperwork lists the following on top of the "arrest paperwork:" State of New Hampshire Department of Safety Division of Motor Vehicles. On this form, October 26, 2024, is listed next to the following field: Date of Service.
30. The claimant has submitted to the DUA during the Remand Session a Notice of Dispositional Conference form dated April 29, 2025, from the State of New Hampshire Superior Court as the docket for the claimant's court proceedings in the State of New Hampshire, showing a list of the charges filed and their status as of the Remand Hearing. The claimant has also submitted to the DUA during the Remand Session a Bail Order from the State of New Hampshire listing the charges filed against the claimant.
31. The claimant has submitted documents to the DUA during the Remand Session confirming her participation in outpatient recovery treatment programs from November 1, 2024, until the Remand Hearing Sessions.
32. The claimant did refuse to take a field sobriety test or a breathalyzer test. The "arrest paperwork" from the State of New Hampshire Department of Safety Division of Motor Vehicle lists October 26, 2024, next to the Date of Service field. This form was completed by a police officer. On the form, the police officer selected the following option on the form: "FAILURE TO SUBMIT – Because you failed to submit to testing, the Department of Safety hereby suspends your driving and boating privileges effective (30) days from today." On this form, the police officer also selected "Refused to submit to testing."

33. The following 14 criminal charges were filed against the claimant as a result of her arrest on October 26, 2024: seven counts of simple assault under Statute 631:2-A, one count of Resist Arrest/Detention under Statute 642:2, one count of Criminal Mischief under Statute 634:2,III, two counts of Criminal Threatening – conduct under Statute 631:4, I(a), one count of Disorderly Conduct under Statute 644:2, one count of DUI – Impairment under Statute 265A:2, I(a), and one count of Disobeying an Officer under Statute 265:4. These Charges are listed on the Notice of Dispositional Conference form dated April 29, 2025, from the State of New Hampshire Superior Court.
34. The criminal charges are still pending against the claimant (as of the date of the Remand Hearing Sessions held on May 1, 2025, and May 29, 2025). The claimant’s next scheduled court date is June 4, 2025. The claimant’s criminal case was initially being held in the New Hampshire District Court and was removed to the New Hampshire Superior Court.
35. In a Report of ALJ from the Department of Safety Bureau of Hearings from the State of New Hampshire with a hearing date listed of January 28, 2025, the ALJ wrote the following Conclusion of Law regarding the claimant: “There is insufficient evidence to support a finding of reasonable grounds to believe the respondent was impaired by alcohol at the time he [sic] operated a motor vehicle at [Location B] on 10/26/2024.” In this report, the ALJ also wrote the following under disposition, “The Confirmation of a Notice of Suspension/Revocation Action letter issued by the Director confirming the Order of Suspension is DISMISSED/RESCINDED.” At this time, the claimant’s driving license was reinstated.
36. The claimant was released from custody on November 1, 2024.
37. The claimant got from where she was being detained in New Hampshire to her home in Massachusetts by her mother picking the claimant up in New Hampshire and bringing the claimant home.
38. After being arrested on October 26, 2024, the claimant was not released from custody until November 1, 2024, because the judge assigned to the claimant’s criminal case required the claimant to be admitted to an outpatient mental health program before being released and granted the claimant bail as long as the claimant found an outpatient mental health program.
39. On November 17, 2024, the claimant began her treatment program with [Program A]. In a letter dated February 18, 2025, the Psychotherapist from [Program A] advised the following regarding the claimant: “This is the letter of attendance for you indicating that you are engaged in mental health treatment through [Program A] care since 11/17/2024 on weekly basis to present time for next [sic] six months. If you would like any further information regarding your treatment please feel free to contact me at 978-254-0946.”

40. On December 17, 2024, the claimant began treatment at [Program B]’s IHAT Program. In a letter dated February 19, 2025, the Health Information Management Specialist from [Program B] advises the following regarding the claimant: “The above-named individual is a client of [Program B] and participating in [Program B]’s 52-week outpatient in-home addiction program (the “IHAT Program”) for treatment of substance use disorder. [Program B] utilizes a multidisciplinary team to deliver IHAT Program services on an individual[ized basis, which may include assessment and evaluation, medication management, individual] and family therapy, recovery support services, alcohol and drug screening, care coordination, and connection to community resources. The Client admitted to the IHAT Program on 12/17/2024 and anticipated to discharge on 12/17/2025. Additional information related to the care and treatment provided to the Client is contained in the official medical record, which can be provided upon request and receipt of written authorization from the Client.”
41. The claimant is being treated for alcoholism.
42. The treatment consists of focusing on the claimant’s mental health, staying sober, participating in urine testing, meeting with two therapists per week, meeting with two Certified Recovery Advisors per week, meeting once per month with a nurse care coordinator. The claimant participates in the treatment with a combination of virtual meetings and in-person meetings.
43. The claimant had to enter this program to secure her release from detention. The court did not go into specific details about what would be required of the claimant and instructed the claimant to attend an outpatient program.
44. The claimant did volunteer to enter the program as a condition of her release from detention.
45. As of the date of the remand hearing, is [sic] the claimant still participating in the program at [Program A] and the program at [Program B].
46. On September 11, 2024, the claimant sent her supervisor [Supervisor] the following text message: “Hi [Supervisor] I made use of the services you recommended. Thank you! I will be seeing someone Monday. Just figure I’d update you.” The circumstances that had prompted the claimant to ask her supervisor for help were that the claimant was experiencing personal issues caused by her spouse cheating on the claimant followed by the claimant going into depression, using alcohol, and needing to speak with someone. The supervisor had recommended that the employer provided [sic] including four free therapy sessions.

47. The action that the claimant took after September 11, 2024, to resolve the situation for which she sought help was seeing a doctor for depression for weekly appointments until October 26, 2024.
48. The claimant does not have text messages on her phone regarding this request for help prior to the one she sent at 5:01 p.m. on September 11, 2024. The claimant no longer has access to the same device that the claimant had containing text messages.
49. The claimant does not have any documentation corroborating the help she received as a result of her request for assistance as the claimant has not seen this doctor since before the claimant was arrested.
50. Prior to the claimant's arrest on October 26, 2024, the claimant had sought treatment for alcoholism. In 2016, the claimant had received treatment from a doctor through [Program C] for 2-3 years.
51. As of the date of the remand hearing, the claimant is still attending treatments to control her alcoholism and is taking a medication, Naltrexone, to cure the cravings of alcohol.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is entitled to benefits.

Although the claimant's separation was formalized by the employer on October 31, 2024, the consolidated findings show that the claimant's separation resulted from being a "no-call/no-show" for four consecutive workdays between October 28 and October 31, 2024. *See Consolidated Findings ## 11–14.* Where a claimant is absent from work without notifying her employer, the Supreme Judicial Court (SJC) has held that the consequent separation is properly considered to have been initiated by the claimant. *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)).

Thus, the review examiner issued her decision pursuant to the following provisions of G.L. c. 151A, § 25(e)(1), which provide, in relevant 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

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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.

Under this section of law, the claimant has the burden to show that she is eligible to receive unemployment benefits. In this case, the review examiner concluded that the claimant had met her burden. We disagree.

At the outset, we note that there is nothing in the record that suggests that the claimant voluntarily separated for good cause attributable to the employer. 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). Indeed, the review examiner found that the claimant did not inform the employer that she was resigning, and that the employer did nothing that caused the claimant to stop reporting to work. See Consolidated Findings ## 23–24. Thus, we focus on whether the claimant's circumstances constituted urgent, compelling, and necessitous reasons for leaving work.

“[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).

The review examiner initially reasoned that the claimant did not bring her unemployment upon herself because she is an alcoholic, and that her separation was attributable to the involuntary compulsion to drink, rather than to any intentional choice made by the claimant. The Supreme Judicial Court addressed this argument in Shepherd v. Dir. of Division of Employment Security, 399 Mass. 737 (1987) (discharge for failing to meet with employer to discuss excessive absences analyzed under G.L. c. 151A, § 25(e)(2)).

Although Shepherd also involved a claimant who struggled with alcoholism, it does not support an award of benefits in the present case. We have previously agreed that the consideration shown in Shepherd for the role that alcoholism may play in causing a separation can be applied to other provisions under G.L. c. 151A, § 25(e). Just as various medical issues can mitigate misconduct in discharge cases, so can medical issues render a separation involuntary for urgent, compelling, and necessitous reasons. See Board of Review Decision 0026 2284 78 (Mar. 28, 2019).

However, whether we analyze these alcoholism cases under G.L. c. 151A, § 25(e)(1), § 25(e)(2), or under the separate urgent, compelling, and necessitous provision in § 25(e), the underlying principle is the same. The question is whether the claimant was responsible for her own

unemployment. With regard to alcoholism, we turn to the SJC’s instructions for remand in Shepherd. The Court directed the agency to focus on the claimant’s circumstances and state of mind *at the time of his misconduct*. Shepherd, 399 Mass. at 740. Specifically, the Court remanded to know whether the misconduct was attributable to the disease of alcoholism and whether, at the time of the misconduct, he “had control of his alcoholism or . . . he deliberately and willfully refused to accept help in controlling it.” Id.

In the present case, both before and after the remand hearing, the review examiner found that the claimant became separated for being a no-call/no-show for several days after being arrested, charged with driving under the influence (DUI), and being incarcerated from October 26 through October 31, 2024. *See Consolidated Findings ## 7 and 11–13.* Because the review examiner also found that the claimant is an alcoholic and that her arrest for DUI “was caused in connection with [her] being an alcoholic” [sic], the review examiner initially concluded that the claimant separated involuntarily, for urgent, compelling, and necessitous reasons. *See Consolidated Findings # 8 and 26.* We disagree with the review examiner’s legal conclusion as a matter of law.

The consolidated findings after remand show the claimant was arrested on October 26, 2024, and detained for several days because she had been arrested and charged with 14 separate criminal charges arising from her alleged refusal to submit to field sobriety and breathalyzer tests. *Compare Consolidated Finding # 9 and Consolidated Findings ## 29–30 and 32–33.* She was not merely detained because she was allegedly driving under the influence of alcohol, her conduct also warranted more than ten additional, separate criminal charges. Although the claimant’s driving privileges in New Hampshire were eventually restored after an administrative hearing with that state’s Department of Safety, the criminal charges remained pending as of the date of the remand hearing and had been removed from District Court to the higher Superior Court. *See Consolidated Findings ## 34–35.*

As noted above, the review examiner found that the claimant is an alcoholic. *See Consolidated Finding # 8.* However, the consolidated findings do not support a conclusion that she was making sincere efforts to control her alcoholism at the time of the final incident on October 26, 2024. Prior to that arrest, the claimant had sought treatment for alcoholism in 2016, for “two to three years.” *See Consolidated Finding # 50.* While the claimant attended therapy appointments after September 11, 2024, to address depression arising from learning that her partner¹ had cheated on her, there was no finding that the claimant was addressing her issues with alcohol during this time. Thus, there is no substantial and credible evidence that the claimant had made any effort to get her alcoholism under control since approximately 2019. *See Consolidated Findings ## 46–47.*

Because there is no substantial evidence in the record to show that, at the time of the incident that caused her separation, the claimant was making sincere efforts to treat or otherwise control her alcohol consumption so that it would not adversely affect her employment, we cannot conclude that the separation was involuntary. Rather, we conclude that the claimant brought her unemployment upon himself, her separation was voluntary, and that she should be denied unemployment benefits.

¹ In Consolidated Finding # 46, the review examiner referred to the claimant’s partner as her “spouse.” In Consolidated Finding # 9, the review examiner found the claimant asked her “boyfriend” to tell the employer she had been detained. It is unclear from the consolidated findings and testimony whether the claimant and her partner are married, so we simply refer to them as her “partner.”

Even if we were satisfied that the claimant established an urgent, compelling, and necessitous reason for her separation, in order to be eligible for benefits, the claimant must also show that she took reasonable means to try to preserve her employment. *See Norfolk County Retirement System*, 66 Mass. App. Ct. at 766. The review examiner found that the claimant asked her partner to inform the employer that she had been detained. *See Consolidated Finding # 9*. Where the claimant was attributing the struggles that led to her incarceration and separation to problems arising from this partner's infidelity, she could not reasonably have expected him to be a responsible resource to help her retain her job. Thus, we do not think that she made reasonable efforts to preserve under the circumstances.

We, therefore, conclude as a matter of law that the claimant did not become separated from employment for good cause attributable to the employer or urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending November 2, 2024, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 29, 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.

