The claimant quit when he did not report for his scheduled shifts or contact the employer after a meeting during which the employer told the claimant it would be investigating a shortage in his cash drawer. Because he did not establish that he had good cause attributable to the employer or urgent, compelling, and necessitous reasons for leaving his employment at that time, he is not eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 334-FHHN-MJN8

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 December 17, 2024. He reopened an existing claim for unemployment benefits with the DUA, which was effective October 20, 2024. In a determination issued on February 12, 2025, the DUA denied benefits beginning December 29, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner modified the agency's initial determination and awarded benefits beginning December 15, 2024, in a decision rendered on June 21, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, 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 left his employment with good cause attributable to the employer because he reasonably believed he had been discharged, 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. From March 15, 2022, to October 9, 2024, when he quit his employment, the claimant worked full-time as a wholesale supervisor for the instant employer, a wholesale restaurant supply store.

2. The instant employer maintains a written policy that employees with a single error of $250.00 or more documented will be termination of employment [sic]. If an error is found, the employer issues the employee a written warning, reminds them of the policy, counts the money at the end of the day, sends the money to the bank, and waits for the deposit confirmation from the bank. If the employer determines the variance does not exist or is not attributable to the employee's actions or inactions, the employee is not disciplined.

3. The claimant was aware of the policy due to violating the policy while he was previously employed. When the claimant previously violated the policy, the instant employer's branch manager was able to determine the cause for the variance, and the claimant was not disciplined. The date of the violation is unknown.

4. On or about October 9, 2024, the claimant quit his position with the instant employer and began working full-time as a line cook for a new employer.

5. The claimant quit his position with the instant employer because of his new job as a line cook.

6. On October 17, 2024, the claimant broke his arm and was no longer able to work as a line cook.

7. The claimant filed an initial application for unemployment benefits with an effective date of October 20, 2024. The claimant reported he was on a leave of absence from his position with the new employer beginning October 6, 2024, and reported he quit his employment with the instant employer on October 8, 2024.

8. Subsequently, the claimant told the new employer he did not know when he would be able to return to work due to his arm injury. The new employer told the claimant that they could not hold his position open, and the new employer and the claimant separated for non-disqualifying reasons.

9. Subsequently, the claimant's physician determined the claimant could return to "light-duty" work. The claimant could not work as a line cook with his restrictions. The claimant asked the instant employer if he could return to work, and the employer agreed.

10. On November 12, 2024, the claimant returned to working full-time for the instant employer.

11. On December 17, 2024, the instant employer determined that the claimant's cashier drawer was short $298.99.

12. On December 17, 2024, the claimant met with the instant employer's assistant store managers. The assistant store managers issued the claimant a written

Disciplinary Action Form (Form), which the claimant signed. The branch manager joined the end of the meeting virtually. The branch manager told the claimant the employer would investigate the balance discrepancy.

13. The December 17, 2024, Disciplinary Action Form (Form) contained the following language "A single error of $250 or more documented will be a termination of employment…" The "Corrective Action Plan" section of the Form is incomplete. It states "[Claimant Name] is receiving a _____. It could result in further disciplinary action up to suspension including termination."

14. Following [sic] December 17, 2024, meeting, the claimant believed he was discharged.

15. The claimant did not report to work for his scheduled shifts on December 19th, 20th, 21st, 22nd, 26th, and 28th, and did not contact the instant employer.

16. The claimant did not report to work and did not contact the instant employer because he believed he was discharged.

17. On or about December 29, 2024, the instant employer determined the claimant had abandoned his job and terminated the claimant's employment.

18. December 17, 2024, was the last physical day the claimant worked for the instant employer.

19. The claimant reopened his existing claim for unemployment benefits with an effective date of January 5, 2025. The claimant reported he was discharged by the instant employer on December 17, 2024.

20. On December 17, 2024, the claimant quit his employment.

21. At the time the claimant quit, work was available.

22. The instant employer did not discharge the claimant.

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. We reject Findings of Fact ## 20 and 22, which state that the claimant quit and was not discharged, as this is a mixed question of fact and law, which at this point in the proceedings is for the Board of Review to decide. *See* Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979). In adopting the remaining findings, we deem them to be supported by substantial and

credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is eligible for benefits.

We must first decide whether the claimant or the employer ended the employment relationship. The claimant asserted that he was discharged at the December 17, 2024, meeting, pursuant to the employer's policy regarding cash discrepancies. The employer contended that, during this meeting, it issued the claimant a Disciplinary Action Form and told him that it would investigate the discrepancy. *See* Findings of Fact ## 12 and 13. The claimant then did not report for his next six scheduled shifts or contact the employer. *See* Finding of Fact # 15. In so finding, the review examiner accepted the employer's account of what happened.

"The review examiner bears '[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .'" Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). 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). We believe that the review examiner's credibility assessment is reasonable in relation to the evidence.

The review examiner also found that the claimant believed that he was discharged following the December 17, 2024, meeting. In the conclusions and reasoning portion of the decision, she stated that the claimant's belief that he had been discharged was reasonable. We disagree.

The employer found that the claimant's drawer was short $298.99. *See* Finding of Fact # 11. The Disciplinary Action Form the employer issued to the claimant states that "a single error of $250 or more" would result in termination and does not specify what sort of disciplinary action the claimant is receiving. *See* Finding of Fact # 13.

However, the form also states that the discipline the claimant is receiving "*could* result in further disciplinary action up to suspension including termination." (Emphasis added.) Id. The employer does not discipline employees for cash drawer discrepancies if the discrepancy is resolved after the bank processes the employer's deposits or it finds that the discrepancy was not the employee's fault. *See* Finding of Fact # 2. The claimant was aware of this, as he had not been disciplined for a prior discrepancy that the employer had been able to resolve. *See* Finding of Fact # 3. During the meeting on December 17, 2024, the branch manager told the claimant that the employer would investigate the discrepancy at issue. *See* Finding of Fact # 12. Given these facts, we do not believe that the claimant could reasonably believe he had been discharged.

Following the December 17, 2024, meeting, the claimant did not report for his next six scheduled shifts or contact the employer. *See* Finding of Fact # 15. The employer concluded that the claimant had abandoned his job. *See* Finding of Fact # 17. We concur. *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)).

Because we agree that the claimant ended the employment relationship, his eligibility for benefits is properly analyzed under the provisions of G.L. c. 151A, § 25(e), that provide, 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 (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 provisions expressly provide that the claimant bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances.

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, the employer met with the claimant to inform him that it had determined his drawer was short and it would be investigating the issue. *See* Finding of Fact # 12. Because the employer does not discipline employees if it is able to resolve such discrepancies or determines that the discrepancy is not the employee's fault, we believe that the employer's actions were reasonable. Thus, the claimant has not shown he had good cause attributable to the employer for resigning.

We next consider whether the claimant separated for urgent compelling and necessitous reasons within the meaning of the Massachusetts unemployment statute. "[A] 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons under G.L. c. 151A, § 25(e)(1), 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). Here, the claimant has not presented any personal circumstances as the reason he did not report for work or contact the employer after December 17, 2024.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he resigned his position for good cause attributable to the employer, or for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning December 15, 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 - August 29, 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.

REB/rh