

Board held that the claimant, a minority owner of a masonry corporation, was not forced to resign for good cause attributable to the employer or under urgent, compelling, and necessitous circumstances. Rather, the record shows that he resigned after negotiating a satisfactory price for his portion of the stock. Thus, his resignation was a voluntary financial decision, and he is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 334-FHJ9-F9PT

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 resigned from his position with the employer and filed a claim for unemployment benefits with the DUA, effective December 22, 2024. The DUA approved the payment of benefits in a determination issued on January 15, 2025. 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 February 8, 2025. 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 further evidence about the claimant's reason for selling his ownership in the business and ending his employment. 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because he did not show that he left his job as a mason for good cause attributable to the employer or for urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law in light of the additional evidence from the claimant following remand.

Findings of Fact

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

1. The employer is a mason company. The claimant worked as a mason/foreman/owner for the employer from approximately 1984 until September 30, 2024.
2. The claimant is a member of the [Union A] out of Massachusetts, Rhode Island and New Hampshire.
3. The claimant was one of the owners of the employer business.
4. The claimant owned the company with his two brothers.
5. Each brother owned one third of the employer business.
6. On May 17, 2024, the claimant sustained a work related injury to his left (minor) hand. The claimant sustained injury to the index finger, the middle finger and the ring finger.
7. The claimant did not file for or receive temporary total disability workers' compensation benefits or temporary partial disability workers' compensation benefits.
8. The claimant has not received a lump sum settlement regarding the work related injury.
9. The claimant filed for medical benefits with the Department of Industrial Accidents regarding medical treatment for his left hand injury.
10. From May 18, 2024, through September 30, 2024, the claimant worked light duty for the employer.
11. On or about May 29, 2024, the employer's accountant heard the claimant say that he would be liquidating the company. The claimant asked the accountant for information regarding the cost of rent each month and information regarding the company's equipment.
12. The three brothers went to a mediator before the resignation and sale of stock. The subject of dissolving the company was discussed during the mediation.
13. The claimant has not worked for the employer since September 30, 2024.
14. Since September 30, 2024, the claimant has periodically helped both of his sons by helping to pick out stone color, color matches or to look at a job for their masonry work. The claimant is not employed by his sons and is not paid by his sons.
15. The claimant does not know when he decided to sell his ownership in the employer business.

16. The claimant sold his interest in the employer business because one of his brothers was retiring and the other brother wanted to slow down toward retirement.
17. The claimant felt he was forced to resign because the other two brothers wanted to liquidate the business.
18. The price for the sale of the claimant's stock was negotiated for by the claimant and the buyer.
19. The claimant did not accept the buyer's first or second offer for the sale of the stock.
20. The claimant signed the Terms For Purchase Agreement, which was dated October 15, 2024.
21. The claimant's resignation as an officer and board member did not precede the signing of the purchase agreement.
22. The claimant's resignation as an employee was a condition of the sale.
23. The claimant signed the Stock Redemption Agreement on December 19, 2024.
24. The claimant signed a Quit Claim Deed on December 19, 2024.
25. The claimant was represented by an attorney when the negotiations occurred and when he signed the documents regarding his resignation and sale.
26. The claimant resigned as a board member and officer on December 19, 2024.
27. The claimant resigned as an employee of the employer on December 19, 2024, because the brothers were liquidating the business.
28. The claimant has not been searching for light duty work since he stopped working for the employer on September 30, 2024.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. Consolidated Finding # 16 fails to include all of the claimant's reasons for selling his ownership interest in the employer's business, as discussed below. We reject the portion of Consolidated Findings ## 17 and 27, which state that the brothers were liquidating the business, as this is unsupported by the record. In adopting the remaining findings, we deem them to be

supported by substantial and credible evidence. Although we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits, we do so on other grounds.

Because the claimant resigned from his position with the employer, his separation is analyzed under the following provisions in G.L. c. 151A, § 25(e), which state, 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. . . .

The express language in these provisions places the burden of proof upon the claimant.

The consolidated findings show that the claimant was employed by a corporation in which he was a one-third owner. Consolidated Findings ## 1 and 3–5. He resigned as an employee as a condition of the sale of the business. Consolidated Finding # 22. On appeal to the Board, the claimant asserts that he was forced to resign under the terms of the Purchase Agreement. However, the record before us does not show that he was forced to do so, nor that his reason for resigning was for good cause attributable to the employer or urgent, compelling, and necessitous reasons.

It is true that the claimant was a minority stockholder, and the other two owners, his brothers, wanted out of the business. *See Consolidated Findings ## 3 – 5 and 16.* Although there seemed to be some discussion about liquidating the business, it is evident that at the time the claimant submitted his resignation, the decision had been made to sell the business. *See Consolidated Finding ## 21 and 22.* Thus, Consolidated Finding # 27 inaccurately states that he quit because it was being liquidated.

The record also shows that the claimant had to sign a number of documents before the sale could be completed. *See Consolidated Findings ## 16–25.* Among them was the Purchase Agreement. *See Consolidated Findings ## 20 and 21.* Implicit in the fact that the claimant could negotiate its terms is that he could refuse to sign it. *See Consolidated Finding # 18.* In fact, he rejected the buyer's first and second offer, holding out until finally accepting the offer of \$600,000.00 in exchange for his stock ownership. *See Consolidated Finding # 19.*¹

Another term of the sale was for him to resign as an employee. Consolidated Finding # 22. We can reasonably infer that, ultimately, he agreed to this term in exchange for the \$600,000.00 stock buyout. Simply put, this had become a financial decision. He chose to resign for economic reasons.

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

To establish 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). The majority owners of a corporation have the right to sell a business. Given that the claimant participated in negotiating the terms of sale, we see nothing in the record to suggest that the employer engaged in unreasonable behavior.

“[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 met his burden to show urgent, compelling, and necessitous reasons for leaving.

The record is confusing as to when the claimant formally resigned. On appeal to the Board, the claimant asserts that he was forced to resign under the terms of the Purchase Agreement. Consolidated Finding # 21 provides that he did not resign before signing the Purchase Agreement, which Consolidated Finding # 20 indicates that he signed on October 15, 2024. Yet, Consolidated Finding # 27 states that he resigned on December 19, 2024, which was the date that he signed the Stock Redemption Agreement, the Quit Claim Deed, and resigned as an officer and director. *See* Consolidated Findings ## 23, 24, and 26. During the remand hearing, the claimant testified that he signed his resignation letter on December 19, 2024, but it was back dated to September 30, 2024.²

Nonetheless, it was undisputed that he had stopped working on September 30, 2024. *See* Consolidated Finding # 13. Inasmuch as the claimant had stopped working more than three months before the sale was completed, we fail to see the urgency of his resignation.

The claimant also testified that he did not want to sell, so he left. Although it is understandable that he was unhappy with his brothers’ desire to sell the business, his objection is not a compelling circumstance that made it necessary for him to leave his job.

We, therefore, conclude as a matter of law that the claimant has not met his burden to demonstrate that he resigned from his employment for good cause attributable to the employer or urgent, compelling, and necessitous circumstances. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

² Although not explicitly incorporated into the review examiner’s findings, the portions of the claimant’s testimony referenced here and below are also part of the unchallenged evidence introduced at the hearing.

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending December 28, 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 - July 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.

AB/DY/rh