

**The claimant was fired for being a no-call, no-show. He had been arrested and was held in jail but did not take steps to inform the employer of the reason for his absence, despite having multiple opportunities to do so. Held he is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because he failed to take reasonable steps to preserve his employment.**

**Board of Review**

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**Issue ID: 352-MKVR-N8T2**

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 separated from his position with the employer on March 3, 2025. He filed a claim for unemployment benefits with the DUA, effective March 9, 2025, which was denied in a determination issued on May 8, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on July 9, 2025. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On September 10, 2025, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the reason the claimant was not in contact with his employer immediately prior to his separation. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant had abandoned his job without urgent, compelling, and necessitous reasons because he had chosen to follow his attorney's advice not to contact his employer after being arrested, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

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

1. The employer is a biotechnology company. The claimant was employed as an analytical scientist from October 2018, until March 3, 2025.
2. On Friday February 21, 2025, the claimant was arrested at his home by [City A] Police officers with a criminal warrant relating to a domestic allegation.
3. The claimant was home alone at the time he was arrested.
4. The claimant lives separately from his family and former spouse.
5. The claimant has two housemates. Neither of whom was home at the time of the arrest.
6. At the time of the arrest, the claimant did not request to make a phone call.
7. The claimant was taken to [City B] police station where he asked to make a phone call. The claimant was not permitted to make a phone call since he was almost immediately taken to [City B] District Court, where he was ordered held at [County A] Sheriff's Department.
8. The claimant was arrested at approximately 1:00 p.m. and appeared at [City B] District Court around 3:00 p.m.
9. From Friday, February 21, 2025, until Monday, February 24, 2025, the claimant was held by the [County A] Sheriff's Department in [City A].
10. On Saturday February 22, 2025, the claimant was permitted to make a phone call. The claimant contacted his divorce attorney since that was the only attorney he knew. The divorce attorney provided contact information of a criminal defense attorney.
11. The claimant left a message for the criminal lawyer. The claimant did not speak to his criminal attorney until Tuesday February 25, 2025.
12. The claimant did not contact family or friends. The claimant was specifically told at [County A] that he could only call his attorney or other legal professional.
13. On February 24, 2025, the claimant was arraigned at [County B] Superior Court on criminal charges and held on \$5,000.00 bail.
14. At the arraignment, a Bar Advocate was appointed to represent the claimant for arraignment purposes only. The claimant had minimal conversation with this attorney who assisted procedurally for an arraignment lasting less than fifteen minutes. The claimant had no opportunity to discuss anything other than the immediate proceedings.

15. The claimant was held at the [County B] House of Corrections in [City C], Massachusetts, from February 24, 2025, until March 6, 2025, when bail was posted by the claimant's attorney.
16. The claimant was only permitted telephone contact with his attorney during this time.
17. On Tuesday February 25, 2025, the claimant spoke with the criminal attorney for the first time.
18. On Wednesday February 26, 2025, the criminal attorney visited the claimant at the [County B] House of Corrections.
19. The claimant requested the criminal attorney contact his employer at this meeting.
20. The criminal attorney refused to do so. He stated that he would not contact the employer, that he intended to keep the case between the attorney and the claimant to avoid any complications. The attorney instructed the claimant not to discuss the case with anyone other than his attorney.
21. The claimant felt that he had no choice but to follow the attorney's instructions which he viewed as an order. The claimant believed he had to follow the attorney's orders, or he would not be represented.
22. Between the February 26, 2025, meeting and being bailed on March 6, 2025, the claimant had two to three additional phone conversations with the criminal attorney. The attorney provided brief updates but stated he would only give limited information over the phone and reminded the claimant not to speak with anyone else about the case.
23. The employer was not contacted while the claimant was held at [County B] House of Corrections.
24. The claimant was scheduled to work for the employer the week beginning February 24, 2025. When the claimant failed to appear for work, the employer attempted to contact the claimant by e-mail, text, and telephone (leaving voicemails) on February 25th, 26th and 27th. On February 27, 2025, the employer initiated a wellness check to the claimant's home.
25. On March 3, 2025, the employer, based on the claimant's failure to report to work and failure to communicate with the employer, separated the claimant from employment.
26. On March 6, 2025, the claimant was released from [County B] House of Corrections and promptly contacted the employer when he had access to his laptop and found he had been separated.

### Credibility Assessment:

The employer did not appear at either the initial hearing or the Board of Review hearing. At the initial hearing, the claimant was not represented. The claimant was accompanied by counsel for the Board of Review hearing. The claimant's representation in this proceeding is separate from his counsel in the ongoing criminal case.

The claimant was asked to submit the entire record of his correspondence with his criminal attorney, including his initial email to the attorney, dated June 6, 2025, at 5:48 p.m. He failed to do so. The claimant declined to answer any questions regarding his correspondence with his attorney in the criminal case on June 6, 2025, on the grounds of attorney-client privilege. As such, no findings of fact could be made about why the claimant sent this email to his attorney or why he objected to his attorney working with a team, and if he was objecting to the costs associated with his case.

In both hearings the claimant was very deferential to the review examiner. In the initial hearing, the claimant's demeanor was such that it could be understood that he had politely followed his attorney's advice in not contacting the employer. In the remand hearing, the claimant emphasized that he had been intimidated by his experience of being arrested and incarcerated and felt he had no option but to follow his attorney's orders.

### 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. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

There was no dispute that the employer separated the claimant after he failed to report to work or call in his absences after he was arrested on February 21, 2025. Consolidated Findings ## 2, 20, and 24. In Olechnicky v. Dir. of Division of Employment Security, 325 Mass. 660, 661 (1950), the Supreme Judicial Court upheld 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, this case is properly analyzed pursuant to G.L. c. 151A, § 25(e)(1), which provides, 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.

The express language of both provisions assigns the burden of proof to the claimant.

There is no evidence indicating that the employer did anything to cause the claimant to fail to report to work or otherwise notify the employer of his absence. Therefore, there is no basis in the record to conclude that the claimant's separation was for good cause attributable to the employer. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (in order to show good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving).

We next consider whether the claimant has shown urgent, compelling, and necessitous reasons for abandoning his job. In conducting this analysis, the Supreme Judicial Court has stated that we must examine the circumstances in each case and evaluate "the strength and effect of the compulsive pressure 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). Applying these concepts to similar cases where the claimant could not report to work because he was incarcerated, the Board has held that the claimant separated from his employment involuntarily for urgent, compelling, and necessitous reasons because the record lacked substantial and credible evidence that the claimant engaged in the behaviors for which he was incarcerated. *See, e.g., Board of Review Decision 0015 9093 69* (Sept. 2, 2016).

In the present case, there is not substantial and credible evidence in the record to indicate that the claimant engaged in the behaviors for which he was arrested. Consequently, we can infer that the claimant separated from his employment involuntarily for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e). However, our inquiry does not end here.

Even if the claimant's separation had been shown to be due to urgent, compelling, and necessitous reasons, a claimant is required to take such "reasonable means to preserve [his] employment" as would indicate the claimant's "desire and willingness to continue [his] employment." *Norfolk County Retirement System*, 66 Mass. App. Ct. at 766, *quoting Raytheon Co. v. Dir. of Division of Employment Security*, 364 Mass. 593, 597-598 (1974).

The claimant's attorney declined the claimant's initial request that he contact the claimant's employer, instead advising the claimant that it was best to keep any discussions of the case between only himself and the claimant. Consolidated Finding # 19. From this interaction, the claimant concluded that his attorney had ordered him not to discuss the case with anyone else, and that, if he did so, his attorney would withdraw from the case. Consolidated Findings ## 20 and 21. However, it appears that the claimant disregarded his attorney's instruction the day that he was released on bail. *See Consolidated Finding # 26*. In an email from the claimant dated March 6,

2025, which was admitted into evidence as page 29 of Exhibit 9, he informed his employer that he had been detained in connection with a legal investigation for several days, his phone was still being held by the court, and he had been prohibited from contacting anyone while he was detained.<sup>1</sup> The claimant's disclosure of these details in his communications with the employer contradicts his assertion that he believed he had no choice but to follow his attorney's instruction.

This record shows that, until he was released, the claimant chose to prioritize those instructions over the risk of losing his job. Although it is understandable that the claimant would have preferred to avoid the possibility of having to obtain new representation, he has not shown that he had no available means to contact his employer.

Finally, we note that the claimant's conversation with his attorney on February 25, 2025, was not the first opportunity to communicate with his employer. When the claimant was first allowed to make a call on February 22, 2025, he contacted the attorney who handled his divorce. Consolidated Finding # 10. He did not ask this individual to notify his employer of his status. Similarly, the claimant made no effort to request that the court-appointed bar advocate notify any friends or family of his arrest and detention. *See* Consolidated Findings ## 5 and 6. Inasmuch as the claimant had not yet spoken with his criminal defense attorney during either of these interactions, he had no reason to believe that notifying his employer of his inability to report to work would impact his representation in his criminal case. *See* Consolidated Findings ## 19–21. On these facts, we believe that the claimant did not take reasonable steps to preserve his employment. *See* Board of Review Decision 0058 4188 23 (Nov. 8, 2023) (claimant who failed to ask her lawyer or anyone else to contact the employer about her absences was ineligible for benefits because she did not make reasonable attempts to keep her job).

We, therefore, conclude as a matter of law that the review examiner's original conclusion that the claimant's separation from employment was disqualifying under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law.

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending March 15, 2025, 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 - March 9, 2026**



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

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<sup>1</sup> While not explicitly incorporated into the review examiner's findings, Exhibit 9, page 29 is part of the unchallenged evidence introduced at the hearing and placed in 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).

**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](http://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