

The claimant asserted that he was too sick to work, but he provided no explanation for his failure to call in his absence. Although the employer discharged him, the Board deemed the claimant's separation to be a resignation due to abandonment. Because he did not demonstrate that he was a no-call, no-show for good cause attributable to the employer or due to urgent, compelling, and necessitous circumstances, he is disqualified pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 352-N57L-LLV8

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 denial of benefits.

The claimant separated from his position with the employer on July 24, 2025. He filed a claim for unemployment benefits with the DUA, effective July 27, 2025, which was denied in a determination issued on October 28, 2025. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 30, 2025. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant engaged in deliberate misconduct in wilful disregard of the employer's interest and, thus, was disqualified under G.L. c. 151A, § 25(e)(2). 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 claimant's appeal.

The issue before the Board is whether the claimant's failure to appear for work or notify the employer of his absence disqualifies him from receiving benefits under any provision under G.L. c. 151A, § 25(e).

Findings of Fact

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

1. The employer is a beverage company. The claimant worked full-time as a merchandiser. The claimant worked for the employer from 8/15/24 to 7/18/25.
2. The claimant's supervisor was the sales supervisor (supervisor).

3. The claimant's schedule varied, but it was generally Sunday through Saturday, with Wednesday and Friday off.
4. The claimant was assigned a flexible start time, depending on the deliveries needed, beginning 5:00 a.m. to 7:00 or 8:00 a.m.
5. The claimant was paid \$19.00 per hour.
6. The employer has an attendance policy (policy). The policy states that employees need to contact their supervisors at least one hour in advance if they are late or absent. If calling in sick, they need to call in for each sick day taken, and a doctor's note is required if employees are out of work for three or more consecutive days. The policy further states that failure to notify the employer can result in discipline, up to, and including, termination.
7. The claimant was aware of the policy, and signed an acknowledgment when he was hired.
8. The purpose of the policy is to provide proper staffing.
9. The employer expects that employees will report for their scheduled shifts and on time and notify their supervisor if they are unable to present for work that day, or if they will be late.
10. On or about the evening of 7/18/25, the claimant began feeling ill.
11. On Saturday, 7/19/25, the claimant called out sick for his scheduled shift by texting his supervisor. He also took a test and tested positive for COVID-19. The claimant did not seek medical attention.
12. On Sunday, 7/20/25, the claimant did not appear for his scheduled shift. He did not call or text his supervisor that he would be out sick. His supervisor texted the claimant, but did not get a response.
13. On Monday, 7/21/25, the claimant did not appear for his scheduled shift. He did not call or text his supervisor, but responded to his supervisor's phone call. The claimant told his supervisor that he was still sick.
14. On Tuesday, 7/22/25, the claimant did not appear for his scheduled shift and texted his supervisor at 6:30 a.m. to say he was still sick.
15. On Wednesday, 7/23/25, the claimant was not scheduled for work. The claimant's supervisor texted the claimant to tell him he needed to get a doctor's note, because he has been out of work three consecutive days. The claimant did not respond.

16. On Thursday, 7/24/25, the claimant did not appear for his scheduled shift. By 9:45 a.m., the claimant's supervisor had not received any type of communication from the claimant about why the claimant had not presented for work that day, or why he had not responded to the supervisor's request for a medical note.
17. The employer discharged the claimant because he did not work his assigned shift on 7/24/25 and did not contact his supervisor to explain why, and did not provide a medical note covering the days from 7/19/25 to 7/24/25 that he was out sick.

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. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree with the review examiner's legal conclusion that the circumstances of the claimant's separation from the employer disqualify him from receiving benefits, but we do so on different grounds.

There is no dispute that the employer had a policy which required all employees to call in any absence from work. Specifically, the policy provided that employees were to notify their supervisor of an absence at least one hour prior to their scheduled start time, and failure to do so can result in discipline, up to and including termination. *See* Finding of Fact # 6 and Exhibit 10.¹ Because the claimant did not report for work or call in his absence on July 24, 2025, a scheduled workday, the employer discharged him from employment. Findings of Fact ## 16–17.

The question before us is whether the claimant is eligible for benefits pursuant to any of the following provisions under G.L. c. 151A, § 25(e):

[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, (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. . . .

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

¹ Exhibit 10 consists of the employer's documentary submissions and includes the employer's attendance policy.

commissioner that his reasons for leaving were for such an urgent, compelling and necessitous nature as to make his separation involuntary.

If the claimant's separation is analyzed as a resignation, the statute expressly assigns the burden of proof to the claimant. If it is analyzed as a discharge, the employer has the burden of proof. Still v. Comm'r of Department of Employment and Training, 423 Mass. 805, 809 (1996) (citations omitted).

Given this record, the claimant's separation is more appropriately characterized as a resignation due to job abandonment. 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). Therefore, the claimant has the burden to demonstrate that he left for good cause attributable to the employer or due to urgent, compelling, and necessitous reasons.

To show good cause attributable to the employer, we focus on the employer's conduct, not on the employee's personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Here, the record contains no evidence that the employer engaged in unreasonable conduct. In the absence of such evidence, the claimant has not shown that the separation was for good cause attributable to the employer.

Further, nothing in the record demonstrates that the claimant's separation was due to urgent, compelling, and necessitous circumstances. "[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). Medical conditions are recognized as one such reason. See Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335-336 (1979) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work).

It is understandable that the claimant could not report for work due to illness. However, in this instance, the claimant was not only absent from work, he also failed to notify the employer that he would be absent.

Even if the claimant had carried his burden to show that medical circumstances beyond his control forced him to stop working, "[p]rominent among the factors that will often figure in the mix when the agency determines whether a claimant's personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant had taken such 'reasonable means to preserve [his] employment' as would indicate the claimant's 'desire and willingness to continue [his] employment.'" See Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. at 766, quoting Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597-98 (1974).

Thus, we must also consider the claimant's reasons for not communicating his absence to the employer. Although the claimant was ill, he had been able to communicate with the supervisor earlier in the week, and nothing in the record indicates that his condition worsened or otherwise prevented him from contacting the employer on July 24. *See* Findings of Fact ## 11 and 14. He did not seek medical attention, and, on July 22, he texted the supervisor that he "should be good by Thursday to come back." *See* Finding of Fact # 11.² The claimant's illness may explain his absence, but it does not explain his failure to communicate. *See* Board of Review Decision 0076 1267 09 (Sept. 29, 2023) (although lack of transportation may have constituted an urgent, compelling, and necessitous reason for not being able to report for work, Board denied benefits because that did not explain why the claimant failed to notify the employer of his absences). In this regard, the claimant failed to make a reasonable effort to preserve his employment.

During the hearing, the claimant asserted that he did not report to work or call in his absence from work on July 24, 2025, because he believed that the employer had already terminated him on July 23, 2025. We agree with the review examiner's finding that he was discharged on July 24th. The timeline established in this record does not align with the claimant's version of events. The employer provided supporting documentation to show that the supervisor had discharged him via text message on July 24, 2025, more than two hours after the claimant's shift was to have started. *See* Findings of Fact ## 4 and 17, and Exhibit 10.

We, therefore, conclude as a matter of law that the claimant is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning July 27, 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 - February 25, 2026



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² Exhibit 10 also includes screen shots of text message communications between the claimant and his supervisor, from July 21, 2025, through July 30, 2025. This July 22 text message, the employer's July 24 text message, and the portion of the claimant's testimony referenced below, are part of the unchallenged evidence in the record and the hearing decision, and they are 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

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.

JMO/rh