COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

L.R.,[1]
Petitioner,

v.

Department of Unemployment Assistance,
Respondent.

No. DET-24-0116

Dated: June 3, 2024

Appearances:
For Petitioner: L.R. (pro se)
For Respondent: Hannah Baker, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

A preponderance of the evidence establishes that the petitioner resigned from his position without first being fired. He had been placed on serial periods of leave based on objective medical reasons. During those periods, he remained eligible for various forms of pay. In these circumstances, the petitioner's separation from work was not the result of either "urgent, compelling" reasons or "good cause for leaving" attributable to his employer. The petitioner is therefore disqualified from receiving unemployment benefits.

DECISION

The petitioner is a former employee of the Department of Unemployment Assistance. His application for unemployment benefits was denied by the department in its capacity as the agency responsible for such benefits. The petitioner's ensuing appeal was referred to DALA. A remote evidentiary hearing took place on May 8, 2024. The petitioner testified on his own behalf. The department called S.R., a labor relations officer. I admitted into evidence affidavits from both witnesses, the petitioner's exhibits A-C, and the department's exhibits A-V.

---

[1] DALA's up-to-date practice in unemployment benefits cases is to replace the names of the petitioner and any witnesses with initials. *See* G.L. c. 151A, § 46(a).

Findings of Fact

I find the following facts.

1. The petitioner began working for the department in 2002. He served as a "claims taker" until 2004 and as a "claims adjuster" after that. (Pet'r Aff. ¶ 1; S.R. Aff. ¶ 5; Resp. Ex. A.)

2. One day in August 2020, the petitioner arrived at work confused and frantic. His coworkers called 911 and later sent him home. On several subsequent dates, the petitioner's coworkers found him disoriented, difficult to locate, or altogether unavailable. In October 2022, the claimant was placed on administrative leave due to concerns about his mental health. (Pet'r testimony; S.R. testimony; Pet'r Aff. ¶ 1; S.R. Aff. ¶¶ 6-7; Resp. Ex. F.)

3. In December 2022, the petitioner underwent an independent medical examination with a psychiatrist. The examiner described the petitioner as slow moving, suffering from memory issues, and exhibiting features of "psychotic mental health conditions." The examiner concluded that the petitioner had no capacity to work at that time. (S.R. Aff. ¶ 8-9; Resp. Ex. F.)

4. The examiner prepared a follow-up report in September 2023. By that time, the petitioner had undergone neuropsychological testing. The examiner described the petitioner's symptoms as including "confusion, disinhibition, limited insight, and cognitive concerns," and his diagnoses as including "major depressive disorder, generalized anxiety disorder, and mild cognitive impairment." The examiner continued to believe that the petitioner could not return to work. (S.R. Aff. ¶¶ 13-16; Resp. Ex. G.)

5. Meanwhile, the petitioner's original period of administrative leave ended in early 2023. He was granted family and medical leave through September 2023. That form of leave was not automatically accompanied by compensation. But the petitioner continued to be paid his accrued vacation and sick time; he also obtained additional sums through an application

to the Department of Family and Medical Leave (DFML). (S.R. testimony; S.R. Aff. ¶¶ 10-11; Resp. Ex. T.)

6. Toward the tail end of his family and medical leave, the petitioner applied for six months of "catastrophic" leave. That form of leave also would not have been accompanied by automatic compensation. But the petitioner would have been eligible for additional DFML payments upon an appropriate application. (S.R. testimony; S.R. Aff. ¶ 20.)

7. Workpartners, a vendor, processed the petitioner's request for catastrophic leave on the department's behalf. Workpartners approved the request in a letter dated October 31, 2023. The most plausible inference from the record is that the letter was mailed to the petitioner's home address but overlooked by him there. (Pet'r testimony; Pet'r Aff. ¶ 3; S.R. Aff. ¶ 20; Resp. Exs. E, R, S.)

8. Also on October 31, 2023, S.R. notified the petitioner by email that the department would be holding a hearing to consider whether his employment should be terminated. The department did not yet know that Workpartners had approved the petitioner's request for catastrophic leave. The hearing was scheduled to take place on November 6, 2023. The petitioner did not appear for the hearing, though he had told S.R. by telephone that morning that he would be present. (S.R. testimony; S.R. Aff. ¶¶ 17-19; Resp. Ex. V.)

9. Soon thereafter, the department learned that the petitioner's request for catastrophic leave had been approved. The department consequently abandoned the idea of terminating the petitioner's employment. The department failed to notify the petitioner of its change of heart. But it did refrain from sending the petitioner a termination letter, conducting a termination meeting with him, issuing a check for the balance of the petitioner's payable sick and

vacation time, and cutting off his access to his workplace-issued email account. (S.R. testimony; S.R. Aff. ¶¶ 20-23.)

10. On November 28, 2023, the petitioner emailed S.R. from his work address, saying: "Am confused about my status. This is holiday season and I haven't been paid in several weeks." S.R. wrote back: "The agency held a hearing to contemplate termination of your employment . . . . You . . . did not attend the hearing." She added: "You had exhausted your FMLA protected leave and DFML benefits (I believe back in end of September/October)." The petitioner rejoined: "My doctor said [I] am fit for duty. . . . Am the most efficient [at] what I do. Been working there for more than 20 years." (Pet'r Aff. ¶ 2; S.R. Aff. ¶ 24-26; Pet'r Exs. A, C; Resp. Ex. V.)

11. The petitioner subsequently filed a retirement application with his retirement board. Upon learning of the application, S.R. emailed the petitioner at his work address, stating: "HR has received information from the retirement board indicating a retirement date for you of 12/31/23. Is this correct? If so, would you please respond back to this email advising the agency you are ending your employment with us with the intent to retire?" The petitioner responded: "Yes, it is correct." Thereafter, the department issued a check to the petitioner for his remaining sick and vacation pay. (Pet'r testimony; Pet'r Aff. ¶ 4; S.R. Aff. ¶ 27-29; Resp. Ex. D.)

12. In January 2024, the petitioner applied for unemployment assistance benefits. The department denied the application in February 2024, reasoning that the petitioner "left work [voluntarily] and without good cause attributable to the employing unit." The petitioner timely appealed. (Resp. Exs. A-C.)

Analysis

Unemployment assistance benefits are governed by G.L. c. 151A. The provisions of that statute must be "construed liberally in aid of its purpose, which . . . is to lighten the burden . . .

on the unemployed worker and his family." *Id.* § 74. *See Connolly v. Director of Div. of Unemployment Assistance*, 460 Mass. 24, 25 (2011).

The general rule is that an employee is ineligible for unemployment benefits if he or she "left work . . . voluntarily." G.L. c. 151A, § 25(e). The statute recognizes that an employee may be able to "establish[] . . . that [the employee's] reasons for leaving work were for such an urgent, compelling and necessitous nature as to make [the] separation involuntary." *Id.* In addition, a resigning employee is not disqualified from receiving benefits if he or she "establishes . . . that [he or she] had a good cause for leaving attributable to the employing unit or its agent." *Id.*

The petitioner's primary argument is that he did not leave work voluntarily. His theory is that S.R.'s various communications to him effectively terminated his employment. *Cf. Sohler v. Director of Div. of Emp. Sec.*, 377 Mass. 785, 787 (1979). The courts have held that a resignation does not count as voluntary if the employee, "on an objective standard . . . reasonably believed she was about to be fired." *Fergione v. Director of Div. of Emp. Sec.*, 396 Mass. 281, 284 (1985). *See Connolly v. Dir. of Div. of Unemployment Assistance*, 460 Mass. 24, 25 (2011). It follows that the petitioner also cannot be viewed as having resigned voluntarily if he reasonably believed that he had in fact been fired.

Certain facts would have supported such a belief: the department convened a hearing to consider the petitioner's termination, reproved him for failing to attend, and did not update him that it had abandoned the termination process. On the other hand, the petitioner received no termination letter, attended no termination meeting, collected no final paycheck, and retained access to his workplace email. Further, in his last November 2023 email to S.R., the petitioner asked essentially to be returned to his desk, citing his doctor's opinion, his efficiency, and his

longevity. This was the request of an employee who understood that his employment status remained fundamentally intact. The fact that the petitioner did not apply for unemployment benefits until January 2024 also suggests that he did not interpret S.R.'s November 2023 messages as ending his employment. On balance, a preponderance of the evidence favors the conclusion that the petitioner did not believe either subjectively or reasonably that his employment had been terminated, or was heading inexorably toward that outcome.

By way of a backup theory, the petitioner emphasizes that the department placed him on extended periods of leave without his usual compensation. A pay cut may sometimes create circumstances "urgent, compelling and necessitous" enough to make the employee's resignation involuntary. G.L. c. 151A, § 25(e). *Cf. Manias v. Director of Div. of Emp. Sec.*, 388 Mass. 201, 203-04 (1983); *Svoboda v. Director of Div. of Emp. Sec.*, 386 Mass. 1004, 1004 (1982); *Graves v. Director of Div. of Emp. Sec.*, 384 Mass. 766, 768 (1981). "The nature of the circumstances of each individual case, and the degree of compulsion that such circumstances exert on a claimant, must be objectively evaluated." *Crane v. Commissioner of Dep't of Emp. & Training*, 414 Mass. 658, 661 (1993). *See Ducharme v. Commissioner of Dep't of Emp. & Training*, 49 Mass. App. Ct. 206, 209 (2000). The employee bears the burden of proving "the reasonableness of [the] belief that [the circumstances] provided compelling justification for the voluntary termination of . . . employment." *Leone v. Director of Div. of Emp. Sec.*, 397 Mass. 728, 733 (1986). *See Crane*, 414 Mass. at 660-61.

The petitioner's periods of involuntary leave did not present "urgent, compelling and necessitous" reasons for him to resign. Those periods of leave reflected the patient efforts of the petitioner's employer to accommodate his mental health issues. Each period was accompanied by various pay amounts. As of late 2023, the petitioner believed that his application for a period

of "catastrophic" leave remained undecided: but a telephone call to Workpartners would have informed the petitioner that the application had been approved, and further research would have revealed that the petitioner remained eligible for additional DFML benefits. All in all, it would have made good financial sense for the petitioner to remain in the department's employ. The circumstances did not compel his resignation.

The petitioner similarly did not possess "good cause for leaving attributable to the employing unit." G.L. c. 151A, § 25(e). Given the considerations described in the preceding paragraph, it would be difficult to view the petitioner's modified compensation arrangements as good cause for resignation. *See Manias*, 388 Mass. at 203-04; *Svoboda*, 386 Mass. at 1004; *Graves*, 384 Mass. at 768. In any event, those modified arrangements were not "attributable to" the department, which by all accounts obeyed the leave-related, pay-related, and discipline-related rules that governed the petitioner's employment. The petitioner's periods of involuntary leave were prompted by his mental health issues. Those issues are sympathy-worthy. Perhaps they may entitle the petitioner to other forms of public assistance. But they do not make the petitioner's reasons for leaving his employment attributable to the petitioner's employer within the meaning of the unemployment statute.

Conclusion and Order

The department's decision is AFFIRMED. This decision may be appealed to the board of review within thirty days. G.L. c. 151A, § 40.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate