



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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**BOARD OF REVIEW
DECISION**

In the matter of:

Appeal number: **BR-121672**

CLAIMANT APPELLANT:

EMPLOYING UNIT:

S.S. #XXX-XX-
Hearings Docket #597229

EMP. #

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Kathleen Della Penna, 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 reverse.

The claimant resigned from his position with the employer on August 7, 2011. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on October 20, 2011. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on December 5, 2011. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without either 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 issues on appeal are: (1) whether the claimant's belief that his polyester uniform pants exacerbated his psoriasis was reasonable; and, (2) if so, whether he took reasonable steps to preserve his employment prior to leaving his job.

Findings of Fact

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

1. The claimant worked for the employer as a bell dispatch and he was employed from 5/27/10 until his separation on 8/7/11.
2. The claimant left the job due to a skin condition that he believed was exacerbated by the working conditions.
3. The business is a resort and health spa.
4. The uniform for the bell dispatch department consisted of black polyester pants and a white shirt with the company logo on the front.
5. The claimant has a history of developing a skin rash which is exacerbated by heat.
6. The claimant did not inform the employer of his past skin problems as he felt they were personal.
7. The claimant's regular job duties included opening the department in the morning; delivering the newspapers to guests; valet cars; deliver guest luggage to guest rooms; park guest cars.
8. In the end of May or the beginning of June 2011 the claimant developed a severe skin condition in his groin area that his doctor considered psoriasis that would not be controlled.
9. The claimant found in the past that his condition was compounded by fabric that was not breathable and by dark colored fabric.
10. The uniform slacks were a polyester fabric that does not breathe.
11. The claimant changed his hours from full time to part time prior to July 2011 for insurance purposes and it appeared that the reduction in hours in that work environment seemed to help the skin condition a little. The claimant was on part-time for about three months.
12. The claimant had a regular doctor's appointment set up for July 2011 and decided to wait until he saw the doctor for advice.

13. Before the July doctor's appointment the claimant approached the employer requesting to go back to full-time hours, and at the time the supervisor needed a full-time person and the claimant was brought on full-time.
14. On 7/12/11 the claimant saw his doctor and he was given a cortisone cream to help heal the rash. At this visit the claimant's doctor gave the claimant the following note:

(Claimant) was seen in our office today with a skin condition that would contain itself with lighter weighted clothing during hot weathered days.
15. On 7/13/11 the claimant gave his supervisor the doctor's note and the supervisor indicated that he would give the note to the human resource department. Shortly after the claimant gave his supervisor the doctor's note the supervisor informed the claimant that cotton pants were on order for him.
16. In the past, individuals in the department have talked about wanting khaki colored pants and an edict came down from the corporate office that this would not happen.
17. On 7/25/11 the claimant's supervisor was e-mailed that the claimant's slacks were in.
18. The supervisor does not recall receiving an e-mail stating that the pants were in.
19. The claimant was concerned that although the pants that were ordered were going to be light weight they were still going to be black pants. On 8/4/11 he had his doctor write up the following note:

(Claimant) was seen in our office on July 12, 2011, for a skin condition that would contain itself with lighter colored cotton clothing. We are asking for your help in this matter, because the problem is not resolving itself without the patient using materials that reflect light and breath easier.
20. On 8/5/11 the claimant's supervisor was off and the claimant left a copy of the 8/4/11 letter in the supervisor's mail slot and in the human resource mail slot.
21. Neither the supervisor nor the human resource department received the 8/4/11 doctor's note.
22. If the human resource department was made aware of the claimant's request for lighter color and lighter weight pants this would have been brought to the attention of the corporate office and corporate would have to make the decision.

23. On 8/7/11 the claimant reported for 5:30 a.m., as scheduled, to open the department and the office was extremely warm. The claimant's rash immediately started to bother him making it difficult to walk. At this point the claimant was in so much pain he made a decision to leave the job.
24. When the supervisor reported for work at 9:00 a.m., the claimant told him that he needed to speak with him and the supervisor told the claimant that as soon as he finished catching up with his work he would meet with the claimant.
25. The supervisor did not come to get the claimant so after a while he went to the supervisor and handed in his name tag and key and said, "I quit I can't do this anymore. I need more money." The supervisor asked the claimant if he was sure that he wanted to do this. The claimant left.
26. At the time the claimant resigned he had not been informed that the pants that were on order were in.
27. The company offers a leave of absence or intermittent leave of absence.
28. The claimant was not aware that a leave of absence or intermittent leave of absence would be available to him.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 25(e), provides in pertinent part, as follows:

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 review examiner's findings establish that the claimant had a legitimate health concern, which prompted his leaving. The record before us reflects that the claimant suffered from psoriasis in the groin area. The review examiner found that the claimant believed that his condition was exacerbated by a combination of the warm weather and the polyester fabric of his uniform pants. Furthermore, the claimant's doctor wrote a letter for the employer stating that the claimant's skin condition would be alleviated by "lighter weighted clothing during hot weathered days." The claimant gave the letter to the employer on July 13, 2011 and the employer ordered new cotton pants for the claimant. The employer received the new pants on July 25, 2011, but it never informed the claimant of their arrival. The claimant chose to resign from his position on August 7, 2011 due to a flare-up of his condition.

Our standard for determining whether a claimant's reasons for leaving work are urgent, compelling, and necessitous has been set forth by the Supreme Judicial Court. 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 (1991).

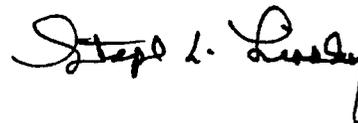
Here, to qualify for benefits, under G.L. c. 151A, § 25(e), the claimant need not prove that his psoriasis was in fact exacerbated by his uniform pants, merely that his belief that this was so was reasonable. See Carney Hospital v. Dir. of the Division of Employment Security, 382 Mass. 691 (1981) (rescript opinion) (leaving work under a reasonable belief that her skin infection was caused by her work environment was sufficient to support a conclusion that the claimant's separation was involuntary under G.L. c. 151A, § 25(e)(1)). In our view, the evidence in the record establishes that the claimant's belief that his psoriasis was exacerbated by his uniform pants was, at minimum, reasonable. Furthermore, the findings establish that the claimant took reasonable steps to preserve his employment when he requested uniform pants in a "lighter weighted" fabric, but the employer failed to supply the claimant with the new pants. See Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93 (1984).

We, therefore, conclude as a matter of law that the claimant left his employment for urgent, compelling and necessitous reasons.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending August 13, 2011 and for subsequent week, if otherwise eligible.



John A. King, Esq.
Chairman



Stephen M. Linsky, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF MAILING - February 29, 2012

Member Sandor J. Zapolin did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY TO FILE AN APPEAL IN COURT – March 30, 2012