**The claimant had urgent, compelling and necessitous reasons for her separation from employment, when her employer terminated her for failing to obtain a renewed work authorization card from Immigration Services before her card expired, although she had timely applied and pursued obtaining the card, which through no fault of the claimant’s, took almost four months to arrive.**

**Board of Review Paul T. Fitzgerald, Esq.
19 Staniford St., 4th Floor Chairman
Boston, MA 02114 Stephen M. Linsky, Esq.
Phone: 617-626-6400 Member
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**Issue ID: 0015 5236 84**

**Claimant ID: 10350345**

**BOARD OF REVIEW DECISION**

Introduction and Procedural History of this Appeal

The claimant appeals a decision by A. Williams, 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 was separated from her position with the employer on December 18, 2014. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on April 3, 2015. 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 May 5, 2015. We accepted the claimant’s application for review.

Benefits were denied after the review examiner determined that the claimant 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 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.

The issue before the Board is whether the review examiner’s conclusion that the claimant caused her own separation by failing to renew her work authorization is supported by substantial and credible evidence and is free from error of law, where the claimant had applied for a renewed work authorization card well before its expiration date, but did not receive the new one before the old one expired.

Findings of Fact

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

1. The claimant worked as a Waitress for the employer, a restaurant, from 5/9/14 until 12/18/14, when she became separated.
2. The claimant was hired to work full time, 40 hours earning $2.63 an hour plus tips.
3. The claimant became separated as a result of her work authorization card expiring.
4. The claimant’s work authorization card was due to expire on 12/18/14.
5. The claimant applied for a renewal of her work authorization on 11/14/14 paying the $380 processing fee.
6. On 11/18/14, the claimant received an email message from the employer’s payroll department informing her that her work authorization was due to expire in 30 days on 12/18/14 and putting her on notice that she would not be able to continue her employment without a valid card.
7. The claimant contacted immigration to inquire about her renewal. She was told that it was up to her employer if they wanted her to continue working without it.
8. The claimant tried to work on 12/21/14 and was informed by the Assistant Manager that she was not going to be allowed to work without the renewal.
9. The employer held the claimant’s job for two weeks and then filled her position.
10. The claimant received a termination notice date 1/5/15 from the employer, informing [sic] her that they were no longer able to hold her position since she did not have a valid work authorization.
11. The claimant did not receive her renewed work authorization card until the end of February 2015.
12. The separation occurred as the result of the claimant’s work authorization expiring.

Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate 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. However, as discussed more fully below, we conclude that, under the circumstances reflected in this record, the claimant had urgent, compelling and necessitous reasons for her separation from employment. She reasonably believed that she was complying with what was required of her by diligently filing her renewal application timely, paying the renewal fee, and pursuing her application with Immigration Services by following up with them and attending her appointments.

In situations where a claimant’s separation results from the claimant’s failure to maintain or obtain a license or other statutory prerequisite for employment, the separation is deemed to be a quit rather than a discharge. Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002 (1985) (rescript opinion). The claimant’s qualification for benefits is therefore governed by G.L. c. 151A, § 25(e)(1), which provides, 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.

Under this section of law, the claimant has the burden to show that she is eligible for benefits. In this case, the claimant has not offered any evidence that the employer gave her good cause for leaving her position. Rather, the question is whether the claimant has established that she quit her job involuntarily, for urgent, compelling, and necessitous reasons. A “wide variety of personal circumstances” have been recognized as constituting “urgent, compelling and necessitous” reasons under the above statutory provision. 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). The Appeals Court in Norfolk County Retirement System, 66 Mass. App. Ct. at 765, explained that, “Benefits are not to be denied to those ‘who can prove they acted reasonably, based on pressing circumstances, in leaving employment.’” (Citations omitted). In situations like the present one, where the claimant’s separation was compelled by the failure to maintain a license or other legally required documentation, the question is whether the loss of the necessary credential was a result of circumstances reasonably beyond her control, or instead, was the result of the claimant’s own conduct.

The record here establishes that the claimant made reasonable and diligent efforts to obtain her work authorization renewal. She applied on November 14, 2014, paying the $380 processing fee, nearly five weeks prior to expiration. The previous time she had renewed her authorization, it had taken about three weeks, so she believed she was making a timely application.[[1]](#footnote-1) She was also proactive in submitting her renewal application, several days prior to the employer’s warning her (on November 18) that her card would expire in a month (on December 18) and that she would not be allowed to work without the permit. After receiving the employer’s warning, the claimant promptly contacted the federal Immigration Services to inquire about the status of her application and thereafter continued to make regular inquiries and requesting an expedited processing. The Immigration Services informed the claimant that it was up to the employer whether she could continue to work without the card. She then attempted to preserve her employment by reporting to work on December 21, 2014, the next scheduled work day after her card had expired, but the assistant manager did not permit her to work. In fact, the claimant did not receive her renewed work authorization card until the end of February — almost four months from when she filed her application.

The record in this case thus reflects that the claimant was conscientious in attempting to maintain the work authorization that would permit her to remain employed, but was thwarted by delays in the permitting process that were beyond her control. Based upon her prior experience, she could not have anticipated that the renewal process would take four months, rather than the approximately four to five weeks she provided. Since the claimant did all she reasonably could have been expected to do, she has met her burden to show that her separation was caused by circumstances outside her control.

We, therefore, conclude as a matter of law the claimant has carried her burden to show that she left her position involuntarily for urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning December 18, 2014, and for subsequent weeks if otherwise eligible.

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**BOSTON, MASSACHUSETTS** Paul T. Fitzgerald, Esq.

**DATE OF DECISION -** **November 5, 2015** Chairman

 

Judith M. Neumann, Esq.

Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT COURT OR TO THE BOSTON MUNICIPAL 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.

SPE/rh

1. We have supplemented the findings of fact where necessary with the unchallenged testimony of the claimant. *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). [↑](#footnote-ref-1)