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Issue ID: 0002 1442 38

BOARD OF REVIEW DECISION

0002 1442 38 (Dec. 20, 2013) – The facts showed that several months before the claimant's due date, when her employer forced her to decide whether she would return to work after giving birth, the claimant had a reasonable belief that she would not be able to afford child-care. Board held that claimant resigned based upon urgent, compelling, and necessitous circumstances.

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 reverse.

The claimant separated from her position with the employer on April 13, 2012. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 6, 2013. 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 March 12, 2013.

Benefits were denied after the review examiner determined that the claimant voluntarily 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), and 25(e). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to take additional evidence as to whether the claimant quit her position for urgent, compelling, and necessitous reasons. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. After reviewing the record of the remand hearing, as well as the review examiner's consolidated findings of fact, we remanded the case again to the review examiner to take additional evidence focusing on what happened *prior to* the claimant's decision to resign her job. Both parties attended the second remand hearing. The review examiner then issued a second set of consolidated findings of fact. Our decision, which is being issued many months after the claimant's initial denial of benefits due to the need for the multiple remands, is based upon our review of the entire record.

The issue on appeal is whether the review examiner's decision to deny benefits is based on substantial and credible evidence and free from error of law, where the consolidated findings of fact indicate that the claimant had to make a decision about her future employment in February 2012 and the claimant believed at that time that she would not be able to afford childcare after her baby was born in May 2012.

Findings of Fact

The review examiner's consolidated findings of fact made following the second remand hearing are set forth below in their entirety:

1. The claimant worked for the instant employer as a head teller at the time of her separation and she was employed for the instant employer from 1/30/06 until her separation on 4/13/12.

2. The claimant left the job to stay home and care for her new born baby.

3. The claimant worked full-time for the instant employer and she was earning a gross pay of $635.00 per week at the time of her separation. The net pay was $400.00.

4. The claimant's baby was due in May 2012 and she discussed openly with her managers that she was unsure of what to do whether or not she would return to work after the baby was born.

5. When the claimant made management aware that there was a possibility that she would not return to work they asked the claimant to let them know by the end of February 2012, because they needed to get someone trained for the claimant's job.

6. The claimant did not inform her supervisor that she felt pressured into making a decision and she was uncomfortable about making a decision on this issue by the end of February 2012.

7. The claimant would have been allowed a twelve week leave of absence and this would have been partially paid by disability payments.

8. On 2/23/12 the claimant informed her supervisor that she would resign effective 4/20/12.

9. The claimant left the job due to her belief that she could not afford child care at the salary that she was making.

10. The claimant lived by herself prior to leaving the job. The father of the baby did not move in until after she left the job. (3)

11. The father of the baby resides with the claimant at the time of each of the hearings. He earns approximately $500.00 per week take home pay. The father of the claimant's child has been living with the claimant on and off since her separation from work. Between the time the claimant left the job and the date of this remand hearing the father of the child continues to live on

and off with the claimant and he continues to pay her rent and some expenses. (3,4a,4b,4c)

12. At the time of her separation the claimant was married and her husband was not the father of her child. The claimant has since been divorced. At the time of the separation she was not living with her husband.

13. Upon her separation from work the father of her child began paying her rent and helping with expenses, and her parents who live in Florida are lending her money for the expenses that she cannot afford. The parents don't plan on financially supporting the claimant indefinitely, and she will owe them for the money they have provided. (5)

14. The claimant does not know if the father of her child would have paid her rent if she continued to work.

15. Prior to her separation the claimant looked into child care in the [Town A] and [Town B] areas and found that she would have to pay an average of $210.00 per week for child care. (1a. and 1b)

16. The claimant believed that she would not be able to afford child care based on what she was earning and her expenses including rent without help.

17. The grandparents of the child on the fathers side are in there seventies and not able to care for a baby. The claimant's parents live in Florida. The claimant's friends all work the hours that she would have worked so they could not be counted on to care for the child.

18. The father of the child works 7a.m. to 5p.m. Monday through Saturday. Because he was working the same hours as the claimant he could not have provided childcare.

19. The claimant did not ask the employer if she could change her hours so as to accommodate her childcare needs. She didn't ask because she was aware the only hours available were hours which would conflict with any child care that could be provided by the father. The employer would have been willing to work out part-time hours, mother's hours, but they would have been during regular bank hours 7:45a.m. to 5:00p.m. or on Saturday.

20. The claimant's rent was $700.00 per month. (2a)

21. The claimant was walking to work and had no transportation cost. (2b)

22. The claimant has the following monthly expenses: (2c,2d)

Expense Amount
Food $300.00

Electricity $50.00
Gas $160.00
Telephone $60.00
Health Insurance $100.00
Car Insurance $37.50

23. At the time the claimant became separated from her job the father of her child continued to live with her on and off and he continued to contribute to the expenses because she had no income. (3)

24. The claimant did not keep a record of when the father of the child was residing with her [sic] it is constantly on and off.

25. Prior to her separation from work the claimant was paying all of the monthly living expenses listed above and she was paying the $700.00 per month rent. The claimant would have to pay $210.00 per week for child care or $840.00 per month.

26. Based on her income and the income of the child's father ($3600 per month) if the claimant was working and the child's father was living with them and helping to pay for expenses the combined incomes would leave only $65.00 a month for incidentals and emergencies.

27. The claimant based her belief that she could not afford child care and expenses on her pay alone as she was living on her own at that time. The claimant did not factor in the parents financial help as she cannot depend on this and will have to pay them back.(5a) (6)

    The examiner did not include the monthly cable fee of $60.00 that was listed as an expense by the claimant as this is not a necessity.

Ruling of the Board

In accordance with our statutory obligation, we review the consolidated findings of fact 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 that the claimant is not entitled to benefits is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact. In adopting the findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is not entitled to benefits.

G.L. c. 151A, § 25 (e)(1), provides, in pertinent part, as follows:

> No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter 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 . . . .

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.

Under both of these sections of law, the claimant has the burden to show that she is entitled to benefits. Following the initial hearing, the review examiner concluded that the claimant had not carried her burden. Based on the entire record and the consolidated findings of fact, we conclude that the claimant has shown that she quit her job for urgent, compelling, and necessitous reasons.

As an initial matter, we note that the evidence does not support a conclusion that the claimant quit for good cause attributable to the employer. Although the review examiner found that the employer pressured the claimant to make a decision about her future employment in February 2012, this was not an unreasonable request on the part of the employer. The review examiner clearly found that the claimant left her job because she believed that she could not afford childcare at the salary that she was making. Childcare responsibilities and expenses, as well as the economic pressures the claimant was facing, were personal issues which were not created by the employer.

Rather, this case is more appropriately analyzed under G.L. c. 151A, § 25(e). "A 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous'" reasons under this statutory provision. <u>Norfolk County Retirement System v. Dir. of Department of Labor & Workforce Dev.</u>, 66 Mass. App. Ct. 759, 765 (2009), *quoting* <u>Reep v. Comm'r of Department of Employment & Training</u>, 412 Mass. 845, 847 (1992). To evaluate whether the claimant's reasons for leaving work were urgent, compelling, and necessitous, we must examine the circumstances 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." <u>Reep</u>, 412 Mass. at 848. "Benefits are not to be denied to those 'who can prove they acted reasonably'" under the circumstances. <u>Norfolk County Retirement System</u>, 66 Mass. App. Ct. at 765, *quoting* <u>Reep</u>, 412 Mass. at 851.

The review examiner found that the claimant left her job, because she believed at the time that she was required to make a decision that, after her child was born in May 2012, she would not be able to afford childcare. A domestic responsibility, such as child care, can be an urgent, compelling, and necessitous reason for quitting a job. *See* <u>Manias v. Dir. of Division of Employment Security</u>, 388 Mass. 201, 208 (1983). There is no question that caring for a newborn child is a compelling reason to quit a job.

The resignation, however, must also have been urgent and necessitous. Here, although the birth of the claimant's baby was months away, the claimant had to decide in February 2012 whether to remain employed after the birth. The employer essentially forced the claimant to make the

decision at that date, thus imbuing her decision to resign with an urgency that might otherwise have been lacking.

It was also necessary for the claimant to resign in February 2012, because, at that time, she reasonably believed that she would not be able to afford childcare once the baby was born. No one else in the claimant's family was available or able to care for her baby. The claimant researched the possibility of putting the baby in daycare but found that doing so would cost her over $200.00 per week. Given her expenses and her modest income of $400.00 net each week, the claimant would not have been able to afford over $800.00 for childcare on her salary alone. Again, we note that the claimant had to make her decision in February 2012, when she was living alone and no one else was helping to pay for her living expenses. Although she eventually moved in with the father of the baby, the findings do not indicate that this arrangement had been planned or was reasonably foreseeable by the claimant in February. The findings of fact support a conclusion that the claimant's reason for resigning in February 2012, effective with the birth of her baby, was not only urgent and compelling, but also necessary.

The relevant case law does not require that the claimant establish that she had no choice to resign. Rather, the claimant need only demonstrate that she acted reasonably in resigning her employment. *See* Norfolk County Retirement System, 66 Mass. App. Ct. at 766. The record before us establishes the claimant acted reasonably by resigning when she did. As noted above, no one else was available to take care of the claimant's child. She looked into getting childcare but could not afford it. Altering her schedule was not going to help her, as the employer is a bank, which is open during the daytime hours; and no matter when the claimant worked during the day (part-time or mother's hours), no one else would have been able to watch her baby. The options for the claimant were limited, and she looked into ways to keep her job. Based on these circumstances, the claimant has carried her burden to show that she left her job involuntarily under G.L. c. 151A, § 25(e).

We, therefore, conclude as a matter of law that the review examiner's conclusion was based on an error of law, because the claimant, who gave notice of her resignation to the employer in February 2012, separated from her job in April 2012 due to urgent, compelling, and necessitous reasons.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending October 27, 2012, and for subsequent weeks if otherwise eligible. In accordance with G.L. c. 151A, § 14(d)(3), the agency shall investigate whether the costs of benefits paid to the claimant on this claim may not be charged to the employer's account.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 20, 2013

Paul T. Fitzgerald, Esq.
Chairman

Judith M. Neumann, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

SF/rh