

0017 4854 67 (Nov. 22, 2016) – The combination of the claimant’s medical condition of stress and anxiety, recent discipline for poor work performance, and an inability to obtain a transfer or get more help with her job duties created urgent, compelling, and necessitous circumstances for resigning. A two week notice to afford the employer an opportunity to find a replacement and leave on good terms did not render claimant’s reasons for leaving less urgent.

**Board of Review
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Issue ID: 0017 4854 67

BOARD OF REVIEW DECISION

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 resigned from her position with the employer on December 4, 2015. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 10, 2016. 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 June 9, 2016. We accepted the claimant’s application for review.

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). 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. Neither party 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 did not establish urgent, compelling, and necessitous reasons for resigning, when she produced evidence of treatment for acute stress and anxiety, employer dissatisfaction with her work, and no success transferring to a different position, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time for the employer, a hospital, from June of 2015, to December 4, 2015, as a Secretary.
2. The claimant previously worked as a Secretary in education, in marketing for a bank, and as a graphic designer.
3. The claimant, when hired, was informed that the position was challenging due to the necessity of multitasking (answering phones, dealing with patients, and completing administrative tasks) in a fast paced environment, while splitting time evenly between two programs.
4. The claimant found the job to be overwhelming with a long learning curve due to a lack of familiarity with specific tasks, such as with insurance.
5. The claimant suffered from stress and anxiety, attributable to both work and circumstances of her father being transitioned into a nursing home.
6. The claimant suggested to the employer that an extra employee be brought on to effectively deal with all of the work, which the employer dismissed based on its belief that the workload was manageable as it was for the previous employee.
7. At the end of July of 2015, when it became apparent to the employer that the claimant was struggling, the employer offered overtime in order to complete tasks.
8. The employer also reassigned some of the tasks to others in order to assist the claimant in having time to complete tasks.
9. In August of 2015, the claimant went to Human Resources and discussed a possible transfer. The employer informed the claimant that she was not eligible for transfer until after six months of employment.
10. Also in August of 2015, the claimant sought medical attention, first from her primary care doctor (PCP), who recommended that she seek therapy through the Employee Assistant Program (EAP). The claimant's PCP prescribed Cymbalta.
11. The claimant sought therapy through EAP and sought treatment from one of the residents, who prescribed her Xanax.
12. The employer provided the claimant a waiver on the six-month waiting period for transferring into another department.

13. The claimant applied for other available positions.
14. In October of 2015, the claimant's daily average was: twenty-one for receiving patients; nineteen and one-half consult log-ins; two and a half message retrievals; twenty-five and one-half charts filed; less than one fax/ mailing; one and a quarter new charts made, some of which included pre-registration; and, twenty-two calls and charts pulled for next day's appointments.
15. Also in October of 2015, the claimant was absent several times.
16. On November 3, 2015, the claimant received a first written warning for her interaction with a patient on October 26, 2015, in which the claimant responded to a patient by saying, "So?" The claimant contended that she was not intentionally rude.
17. In November of 2015, the claimant was absent for a week.
18. The Director of one of the programs, in which the claimant worked, informally discussed with the claimant that she needed to do a better job or she could end up with more corrective action. A leave of absence was suggested, but the claimant believed a leave would be futile.
19. On November 23, 2015, the claimant tendered her resignation effective December 4, 2015. The claimant offered to stay longer if the employer required her to complete specific tasks.
20. The claimant worked through December 4, 2015.
21. On December 4, 2015, another department contacted the claimant to schedule a job interview, but the claimant was unable to pursue [sic] due to her employment ending and the position being an internal job posting.
22. On December 9, 2015, the claimant's EAP therapist stated that the claimant suffered from high levels of acute stress and anxiety that the claimant describes as being directly related to her most recent job and what she has felt to be unrealistically high demands on her, and that this is the primary reason for her resignation.

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, contrary to the review examiner, that the claimant has demonstrated that she left her job due to urgent, compelling, and necessitous circumstances.

Since the claimant resigned from her employment, her eligibility for benefits is properly analyzed pursuant to 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

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 claimant bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances. Crane v. Comm’r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

The purpose of the unemployment compensation statute is to assist those who are “thrown out of work through no fault of their own.” Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 733 (1986), *citing* Olmeda v. Dir. of Division of Employment Security, 394 Mass. 1002, 1003 (1985). In this case, the findings of fact show that within a couple of months of starting her secretarial position, the claimant was overwhelmed by the job and the employer knew that she was struggling. *See* Findings of Fact ## 4 and 7. Within six months, she had resigned. In order for the claimant to qualify for benefits, we must decide that her decision to leave was either due to the employer’s actions or for urgent, compelling, and necessitous reasons.

When a claimant contends that the separation was for good cause attributable to the employer, the focus is on the employer’s conduct and not on the employee’s personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). In the present case, when the employer saw that the claimant was struggling with the demands of her job, it offered to permit her to work overtime to complete her tasks, it reassigned some of her work to others, and it waived its six-month waiting period for transferring to a new department. Findings of Fact ## 7, 8, and 12. The employer was not obligated to indefinitely reduce her workload or change the essential elements of the job, particularly in light of its experience that other individuals had been able to meet those demands. *See* Finding of Fact # 6. We do not find anything unreasonable about the employer’s actions.

Alternatively, we consider whether 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), “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). However, even if circumstances beyond her control drove the decision to resign, the claimant must show that she first made reasonable efforts to preserve her employment. *See* Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2009).

The examiner found that the claimant was suffering from acute stress and anxiety. *See* Findings of Fact ## 5 and 22; Exhibit # 8.¹ Nonetheless, he did not believe this was sufficient to compel her departure because her therapist did not say it was medically necessary to leave the job. This was error. The claimant is not required to show that she had no choice but to resign. The Supreme Judicial Court has instructed us to 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 (1992). In addition to struggling with stress and anxiety, the claimant was struggling to meet the employer’s performance expectations. She had already received a warning for substandard work performance,² and the director of one of her assigned programs indicated that the claimant was headed for further discipline if she did not do a better job. *See* Findings of Fact ## 16 and 18. Taken together, the claimant’s medical condition and her job performance issues created the type of pressing circumstances that rendered her departure involuntary.

We also consider that the claimant made an effort to stay employed. The claimant tried to treat her medical condition by seeing her primary care physician, consulting with one of the resident physicians in the employer’s facility, and beginning therapy through the employer’s EAP program. Meanwhile, she asked the employer to hire another employee to help her complete her job tasks and she applied for a transfer to different positions. Since neither her condition nor her performance improved, and other positions were unavailable, we believe her decision to resign was reasonable.

We do not agree with the review examiner’s conclusion that the claimant’s departure lacked urgency simply because she gave two weeks’ notice and offered to continue longer, if the employer needed her to. We refuse to penalize an employee for giving an employer notice of her departure so that the employer has an opportunity to find a replacement and she can leave on good terms. *See* Board of Review Decision 0012 5555 80 (Nov. 13, 2014) (considering all of the

¹ Exhibit # 8, a letter from the claimant’s therapist, confirms that at the time of her separation, the claimant “was presenting with emotional suffering from high levels of acute stress and anxiety.” The contents of this note, while not explicitly incorporated into the review examiner’s findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and 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).

² *See* Exhibit 6, a written warning issued to the claimant on or about November 3, 2015, which is also part of the unchallenged evidence in the record.

circumstances facing the claimant, a lengthy notice period, by itself, does not foil her claim for benefits).³

We, therefore, conclude as a matter of law that the claimant has established that she left her job for urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e), and that, prior to doing so, she made sufficient efforts to preserve her employment.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the period beginning November 29, 2015, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 22, 2016



Judith M. Neumann, Esq.
Member

Member Charlene A. Stawicki, 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

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.

AB/rh

³ Board of Review Decision 0012 5555 80 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.