

Claimant did not establish that an urgent and compelling family medical circumstance required her to remain out of work beyond the 30-day leave granted by the employer. The claimant has not provided the employer or the DUA with medical documentation to substantiate her assertions, and she has not provided a reasonable explanation for her failure.

**Board of Review
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Issue ID: 0019 1999 50

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by M. Lerner, 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 affirm.

The claimant separated from her position with the employer on July 2, 2016. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on August 26, 2016. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on September 30, 2016. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without urgent, compelling, and necessitous reasons and, thus, was disqualified, under G.L. c. 151A, § 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 give the claimant an opportunity to testify and present other evidence. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's conclusion that the claimant voluntarily left employment without urgent, compelling, and necessitous reasons, under G.L. c. 151A, § 25(e), is supported by substantial and credible evidence and is free from error of law, where the record establishes that the claimant failed to produce medical or other documentation to substantiate her assertion that it was necessary for her to accompany her mother in Somalia for approximately two months.

Findings of Fact

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

1. On September 11, 2013, the claimant began working as a part time cashier for the employer, a supermarket chain.
2. At some point in her employment the claimant requested to take a month leave of absence to visit her family in Georgia. She requested and was paid for 4 hours of leave time each week that she was away.
3. The claimant's Grandmother lives in Somalia. The claimant's mother lives in [City A], Georgia with the claimant's sister.
4. The claimant's mother is unable to travel internationally by herself because she does not speak English well, cannot read or write, and has some disability which makes it difficult for her to focus.
5. When the claimant's grandmother, in Somalia, became very ill, the claimant's mother felt compelled to go and assist her. The family decided that, since the claimant's sister has a husband and young children, and the claimant does not, it would be best if the claimant was the one to accompany their mother.
6. The claimant spoke to the Customer Service Manager about her need to take time off to help her mother. The claimant was informed that she could take up to 30 days for a personal leave and that additional time could be granted for a medical leave of absence if medical documentation was provided to support the need for leave.
7. The claimant was directed to complete a request for a leave of absence. The claimant had difficulty understanding the leave of absence application, given that English is not her first language. She relied heavily on the Human Resources Manager to explain what was needed. This manager offered to help the claimant by contacting the doctor on her behalf to explain what was needed for documentation.
8. The claimant and her family requested a letter from the claimant's mother's doctor but it was not provided.
9. The claimant asked her sister to encourage their mother's doctor to respond to the request for a letter. Her sister was told that the doctor was not in the office.
10. On April 26, 2016, the claimant completed a leave of absence application in which she applied for 10 weeks of leave, for the purpose of a serious health condition affecting a child, spouse, or parent for which she was needed to provide care. (The form stated that a leave request for this reason would require a physician's certificate.) The request stated that she would be leaving on May 3, 2016 and return no later than July 10, 2016. The form stated on it that she was required to exhaust all accrued paid time off that she was eligible for (including TOPP time, sick time, vacation time and personal time) before

taking any unpaid time off. The claimant and her Human Resources Manager both signed the request form.

11. The Human Resources Manager did not tell the claimant that she was required to exhaust her paid leave time before she could take unpaid leave time. She also did not specifically explain that her employment would or could terminate if she did not return after 30 days, unless she was able to provide medical documentation supporting the need for additional time.
12. The claimant spoke to Human Resources again and explained that she had been unable to get a doctor note. She was told that, without a note, the employer would only hold her job for one month. The claimant stated that she would take the month the employer was offering and that she would then use her earned time off. At that time she believed that she had 65 hours of earned time available. She asked that her manager break the annual leave into 15 hours a week. She assumed this would be acceptable as she officially worked part time.
13. The claimant was required to work an average of 30 hours a week, over the course of a year, in order to maintain her benefits. As she often worked as many as 40 hours a week, the claimant believed that if she maintained 15 hours a week while on leave she would meet this 30 hour average.
14. The Human Resources Manager did not give the claimant an answer regarding whether she could use leave time to extend her leave beyond one month if she was unable to provide a doctor's letter. She just told the claimant to stay in touch regarding her plans and her progress in getting the doctor's letter.
15. The claimant's last day at work was April 28, 2016. She flew to [City A] on April 29, 2016. While there she again tried to get a letter from her mother's clinic regarding her mother's mental health but was told the doctor could not do this for her at that time.
16. Because the Human Resources Manager had been supportive about finding a way whereby the claimant could take more than a 30 day personal leave if necessary, and had continued to discuss the matter with the claimant about her options up until the date she left, the claimant assumed that one of the options they had discussed would be granted to allow her to take more than 30 day[s] of leave if necessary, even though she was never specifically told that she had permission to be away for more than 30 days.
17. The claimant left with her mother for Somalia on May 3, 2016 at 10pm. At that time she had a return ticket for July 3, 2016, which could be exchanged for a different date.
18. The claimant was aware that the employer was waiting for a medical letter regarding her mother's need for assistance due to a serious medical condition

- which she was not going to be able unable [sic] to provide, and that they has asked her to keep them informed of what she was doing and if she was leaving the country. The claimant, therefore, on May 27, 2016, called her husband and asked him to call the employer on her behalf and tell them that she was in Somalia with her mother and expected to return to the U.S. on July 3, 2016. Her husband called the employer and told the employer that the claimant had traveled to her home country; he did not provide a return to work date.
19. The claimant's mother wanted to wait until the claimant's grandmother recovered before returning to the United States. The claimant remained with her in order to accompany her back.
 20. While in Somalia, the claimant's mother had eye surgery.
 21. During the month of May 2016, the employer called the [claimant's] phone number a few times and left messages informing her that they had not received back the leave of absence paper work necessary for a medical leave of absence. The claimant did not receive these messages.
 22. While the claimant was on her leave of absence, in May 2016, the employer issued her three paychecks. One for 16 hours of pay, one for 4 hours of pay, and one for 6 hours of pay.
 23. When the employer had not heard back from the claimant by July 2, 2016, they terminated her employment for job abandonment, as she had been away for over 60 days and had only be[en] granted a 30 day personal leave of absence. They had delayed in taking any action in order to allow her time to provide requested medical documentation.
 24. The claimant's grandmother had not recovered sufficiently, as of July 3, 2016, for the claimant's mother to feel comfortable leaving her. The cla[i]mant, therefore, left her mother in Somalia, in the care of her mother's brother, and returned to the United States.
 25. The claimant called the employer on July 3, 2016 and was told that her Manager had transferred to another store. She was advised to call the new Manager on Monday July 4, 2016. The claimant called on July 4, 2016 and was told at that time to contact Human Resources.
 26. The claimant called Human Resources and asked if the Manager had received the message she had attempted to relay regarding remaining in Somalia until July 3, 2016. She was told that there was no message and that her employment had been terminated.
 27. On July 8, 2016, the claimant filed her 2016-01 claim for unemployment benefits, effective July 3, 2016.

28. On or about July 21, 2016, the claimant completed a questionnaire for DUA indicating that she had to take her mother, who is disabled, to visit her grandmother in another country from May 25, 2016 to July 3, 2016, and that this was what led to the termination of her employment.
29. On August 26, 2016, DUA issued a Notice of Approval, with issue identification number 0019 1999 50-01, stating that the claimant was [entitled] to benefits under Section 25(e)(2) of the law starting April 24, 2016 and subsequent weeks, if otherwise eligible.
30. The claimant reapplied for work with the employer on or about September 19, 2016. She, however, stated she had another job and her availability did not match the employer's needs at that time.
31. The present employer requires employees to work or be paid for at least one shift (4–8 hours) a month in order to be considered an active employee. The claimant normally worked 8 hour shifts.

Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine: (1) whether the consolidated findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to benefits is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's consolidated findings of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence.

The circumstances surrounding the claimant's separation from employment, lead us to analyze her eligibility for benefits under G.L. c. 151A, § 25(e), which 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 this provision of the statute, the claimant has the burden to show that she is eligible to receive unemployment benefits following her permanent separation from work. In cases where we apply the "urgent, compelling and necessitous" standard, we must examine the circumstances surrounding the claimant's separation 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). "[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, 412 Mass. at 847.

On the record before us, the claimant has not established that she left her employment for an urgent, compelling and necessitous reason, as meant under G.L. c. 151A, § 25(e). After remand, the review examiner found that the claimant accompanied her mother to Somalia to visit her grandmother, who was very sick. Prior to leaving the country, the claimant last worked on April 28, 2016, and she returned to the United States on July 3, 2016. The claimant asserted that she accompanied her mother to Somalia because her mother is unable to travel alone due to her inability to read, write, and speak English, and because of a disability, which the claimant, for an unknown reason, could not or would not name. Despite this assertion, the claimant failed to provide the employer and the DUA with medical documentation to substantiate her claims regarding her mother's disability, which is purportedly the cause of the claimant's need to remain out of work for two months.

During the initial remand hearing held on December 28, 2016, the claimant stated that she did not have medical documentation regarding her mother's condition, but that she would be able to obtain a note from a provider of community services familiar with her mother's condition. However, the claimant did not provide this letter at the second remand hearing held on January 23, 2017.¹ At this second hearing, the claimant instead indicated that she had a doctor's note regarding an illness her mother suffered in Somalia, but that she didn't bring it to the hearing because it wasn't relevant. At no time has the claimant given a plausible explanation for her failure, over the course of several months, to provide medical documentation regarding the condition that required her to accompany her mother to Somalia and remain there for two months.² In light of the above, we conclude that the claimant has not established that urgent and compelling circumstances required her to remain out of work beyond the 30 days of leave granted by the employer. The claimant, in effect, abandoned her job when she failed to return after the 30 days.

Even if we assume, *arguendo*, that such urgent and compelling circumstances existed, the claimant has not established that she took reasonable steps to preserve her employment. See Norfolk County Retirement System, 66 Mass. App. Ct. at 766 (noting that a prominent factor to be considered when determining if a claimant separates involuntarily is if the person took reasonable means to preserve her job). See also Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). The record shows that the claimant was informed the employer expected her to provide medical documentation regarding her mother's need for assistance, in order to be granted additional time off beyond the 30-day leave she was allowed. The claimant was also notified that she needed to keep the employer abreast of her plans and her progress in obtaining the doctor's letter. Despite these communications, the claimant did neither of these things requested by the employer. The only communication she tried to establish with the employer was when she asked her husband to call the employer on May 27, 2016, to let it know she would return to the United States on July 3, 2016. However, although her husband

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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 We note that the claimant has not asserted that she felt compelled to remain in Somalia to care for her ailing grandmother. Had the claimant made this assertion, our analysis would have focused on her grandmother's condition, and not her mother's condition.

called the employer, he did not provide the claimant's return-to-work date. While her husband's failure to relay her exact message to the employer is not her fault, we note that the message the claimant wanted conveyed to the employer did not provide most of the information the employer had requested. Additionally, the claimant has not provided a logical reason as to why she could not call the employer herself and keep them informed of her circumstances with respect to her return to work and her efforts to obtain the requested medical documentation.

The claimant argued that, although she was never specifically given permission to take more than 30 days off, she assumed she could take that extra time off and just use her accrued vacation time to cover that period. The claimant also argued that no one told her she could lose her job if she was unable to provide medical documentation substantiating her need to take off more than 30 days. In our view, given the employer's clear and specific requests of the claimant, it was unreasonable for her to assume that her extended leave did not depend on her providing to the employer, in a timely fashion, the requested medical documentation. Furthermore, if the claimant was confused about the terms of her leave, nothing prevented her from obtaining further clarification from the employer prior to the expiration of her 30-day leave.

We, therefore, conclude as a matter of law that the claimant voluntarily left her employment without urgent, compelling and necessitous reasons, as meant under G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending June 4, 2016, and for subsequent weeks, until such time as she has had at least eight weeks of

work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 31, 2017



Paul T. Fitzgerald, Esq.
Chairman



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.

SVL/rh