

**Claimant reasonably decided to leave her job because of the persistent symptoms of her medical condition, fibromyalgia, and because she was unable to function.**

**Board of Review  
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**Issue ID: 0020 9676 15**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by Matthew Shortelle, 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 January 19, 2017. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 29, 2017. 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 May 3, 2017. 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 remanded the case to the review examiner to afford the claimant the opportunity to present testimony and evidence. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. 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 left her employment so that she could attend school and not as a result of any medical issue is supported by substantial and credible evidence and is free from error of law, where after remand the review examiner found that the claimant left her employment because of the exhaustion and anxiety that she experienced due to her fibromyalgia.

### **Findings of Fact**

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

1. The claimant joined the [Military Service] in September 1994.

2. In 2004, the claimant was diagnosed with fibromyalgia.
3. Fibromyalgia causes the claimant anxiety, depression, physical pain, fatigue, and osteoarthritis.
4. On January 7, 2005, the [Military Service] discharged the claimant as a result of her fibromyalgia.
5. The claimant worked as a production controller for the employer, a repair service for the [Military Service], from June 21, 2009 until January 19, 2017. The claimant was a member of a union.
6. The Supervisor supervised the claimant.
7. During the claimant's employment, the claimant told the Supervisor she could complete her duties but had difficulty arriving for work on time.
8. During the claimant's employment, the Supervisor gave the claimant time off from work to attend doctor's appointments.
9. During the claimant's employment, the claimant told the Supervisor her medical issues made her duties more difficult to complete.
10. During the claimant's employment, the Supervisor attempted to remove duties from the claimant such as lifting which would worsen the claimant's medical issues.
11. In April 2016, the employer's Disability Program Manager (the DPM) directed the Supervisor to issue the claimant a Reasonable Accommodation Agreement (RAA) after the claimant established to the DPM she had fibromyalgia and it affected her ability to work.
12. On April 13, 2016, the claimant and the Supervisor agreed to an RAA allowing the claimant to begin work later than the customary start time and to text or email the Supervisor regarding her attendance rather than requiring her to speak with the Supervisor.
13. During the claimant's employment, the claimant submitted requests for leave almost every week as a result of her fibromyalgia and its effect on her work performance.
14. During the claimant's employment, the claimant failed to work as scheduled or arrived late.
15. During the claimant's employment, the claimant told the Supervisor she failed to work as scheduled or arrived late because she did not "feel well."

16. In September 2016, the claimant began to seek treatment for her fibromyalgia at the [Hospital A] hospitals because she believed her civilian medical care was not helping.
17. Around October 2016, the Supervisor asked the claimant for medical documentation so the employer could accommodate any medical issues.
18. In October 2016, the Supervisor asked the claimant and the claimant's union to provide medical documentation regarding any medical issue so that a new accommodation could be agreed upon so that the claimant could continue work.
19. In October 2016, the claimant attempted to make an appointment with the [Hospital A] but no appointment was available until December 2016.
20. On October 12, 2016, the claimant emailed the Supervisor she would not work because she was "frozen with anxiety."
21. The claimant failed to work as scheduled or notify the employer of her absences (AWOL) from October 19, 2016 through October 28, 2016.
22. The Supervisor asked the claimant why she had been AWOL from October 19, 2016 through October 28, 2016 and the claimant said she "fell down the rabbit hole." The Supervisor asked what the claimant meant and the claimant only shrugged her shoulders.
23. After October 2016, the claimant requested leave on line approximately every week.
24. After October 2016, the Supervisor denied the claimant's leave requests because no additional medical documentation had been submitted.
25. After October 2016, the claimant told the Supervisor she felt anxious.
26. In November 2016, the Supervisor wanted to reach a new RAA with the claimant as a result of her continued absenteeism and tardiness. Any new RAA required additional medical documentation.
27. The employer granted the claimant two extensions for her to provide the employer with medical documentation for a new RAA. The claimant failed to provide medical documentation.
28. Around December 14, 2016, the Supervisor initialed a proposed suspension action for the claimant as a result of her attendance and tardiness.

29. In December 2016, the claimant told the Supervisor she was attending rehabilitation services at a [Hospital A]. The Supervisor requested medical documentation.
30. In December 2016, the [Hospital A] notified the claimant she had to speak with a social worker and that the social worker would contact her when the claimant's name came up on her list of contacts.
31. From September 2016 to December 2016, the claimant missed approximately sixty-four percent (64%) of her available work hours as a result of her medical issues.
32. On January 19, 2017, the claimant had failed to work as scheduled or [sic] approximately one and a half weeks due to her fibromyalgia, felt exhausted [sic], and felt anxious [sic].
33. As of January 19, 2017, no social worker from the [Hospital A] had contacted the claimant.
34. On January 19, 2017, the claimant felt "frozen with anxiety" and did not believe she could "function."
35. On January 19, 2017, the claimant quit her employment because of her exhaustion and anxiety caused by her fibromyalgia.
36. On January 23, 2017, the claimant and the employer completed a change of employment status form and the claimant indicated she quit so that she could attend school based on employer personnel guidance.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that these findings support a conclusion that the claimant is entitled to benefits.

The review examiner initially disqualified the claimant after analyzing her separation from employment under 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 . . . .

Also relevant in this case is another provision 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 these sections of law, the claimant has the burden to show that she is eligible to receive unemployment benefits. Following remand, the review examiner found that the claimant was diagnosed with fibromyalgia in 2004, which causes the claimant to experience anxiety, depression, physical pain, fatigue, and osteoarthritis. In 2005, the claimant was discharged from the [Military Service] because of her fibromyalgia. The claimant resumed employment with the [Military Service] in a civilian capacity in 2009, but quit her employment on January 19, 2017, due to feeling frozen with anxiety, and believing that she could not function because of the exhaustion and anxiety caused by her fibromyalgia. The review examiner's findings relative to the medical and psychological conditions the claimant experienced are supported by both the claimant's testimony and documentary medical evidence in the record.

As the record before us establishes, the claimant's separation from employment directly resulted from her health issues. We, therefore, need to consider whether her separation was due to "urgent, compelling, and necessitous reasons" within the meaning of the statute. Under Massachusetts law, "a 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons . . . ." 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). Where the medical conditions experienced by the claimant, including the symptoms of anxiety, depression, physical pain, fatigue, and osteoarthritis, directly affected her ability to perform her job, we believe that urgent and compelling personal circumstances existed.

In addition to the existence of urgent and compelling personal circumstances, efforts to preserve one's employment must also be considered when deciding whether a claimant has left a job involuntarily. *See* Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 336 (1979); Norfolk County Retirement System, 66 Mass. App. Ct. at 766. In determining whether the claimant made sufficient efforts to stay employed, we must examine both the reasonableness of these efforts, and whether further efforts would have been futile under the circumstances. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984) (an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile). *See also* Norfolk County Retirement System, 66 Mass. App. Ct. at 766. We note that our consideration in this regard is guided by the statutory mandate that we construe the statute liberally, and that the claimant's actions must be viewed through the lens of reasonableness under the circumstances. *See* G.L. c. 151A, § 74.

On this record, we conclude that, prior to quitting, the claimant made adequate efforts to preserve her job. The claimant has established that her fibromyalgia and other medical symptoms affected her ability to work, and, as a result, that she repeatedly requested accommodations in order to

continue working. Despite her attempts to remain employed, her particular medical circumstances ultimately overwhelmed her and forced her to separate. Moreover, it is entirely reasonable for the claimant to have separated when she did given that she had been unable to work for one and a half weeks due to her fibromyalgia, she felt anxious and exhausted, and she was unable to function.

We, therefore, conclude as a matter of law that the claimant left work 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 January 15, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 15, 2017**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Judith M. Neumann, 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