

**A claimant quit her job involuntarily for urgent, compelling, and necessitous reasons, when she was unable to afford living on Cape Cod (where both she and her husband worked) after her daughter and son-in-law, with whom she shared expenses, decided to move to North Carolina.**

**Board of Review  
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**Issue ID: 0023 3261 54**

## **BOARD OF REVIEW DECISION**

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

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant resigned from her position with the employer effective August 3, 2017. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 7, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on December 20, 2017.

Benefits were awarded after the review examiner determined that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons and, thus, was not 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 employer's appeal, we accepted the employer's application for review and remanded the case to the review examiner to allow the employer an opportunity to provide testimony and to clarify why the claimant thought that she needed to move out of Massachusetts. 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 before the Board is whether the review examiner's conclusion that the claimant resigned her position involuntarily for urgent, compelling, and necessitous reasons is supported by substantial and credible evidence and is free from error of law, where the claimant was unable to find affordable housing on Cape Cod near her job after her daughter and son-in-law decided to move to North Carolina.

### **Findings of Fact**

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

1. The claimant worked full-time for the employer, a non-profit organization, assisting individuals to become self-sufficient, from May 13, 2011, until separating from employment on August 3, 2017.
2. The claimant was hired to work as a Retail Team Leader with the employer. For the last five years of her employment, the claimant held the position of full-time Store Manager II. The claimant's annual salary was \$54,353.
3. The employer provided annual raises upon the yearly performance review. In August, 2016, at the time of the last review, the claimant received a 3% increase in her salary when meeting expectations. (The largest increase amount offered by the employer was 4.5% for exceeding expectations.)
4. The claimant worked for the employer at their [Town A], Massachusetts location, which was a 15-to-20-minute commute from where the claimant was residing.
5. While working for the employer, the claimant and her husband lived with their daughter and son-in-law, and their two children in a home in [Town B], Massachusetts. The claimant's other daughter, who is disabled, also lived with them. The claimant and her husband shared the living expenses while living with their daughter and son-in-law.
6. The claimant and her husband's monthly expenses while living with their daughter and son-in-law at the home in [Town B] were \$825 for rent, \$150 for heat, \$100 for cable, \$25 for renter's insurance, \$545 for automobile payment, \$125 for auto insurance, \$1,000 for credit card payments, \$160 for cellular telephone, \$350 for groceries and \$280 for gasoline for transportation to work.
7. The claimant and her husband also have approximately \$77 per month in medical expenses, which includes prescriptions, co-pays and annual doctor visits.
8. The claimant's net pay per week with the employer was approximately \$650.
9. The claimant's husband worked in a seasonal position, working March through mid-December, part-time, approximately 28 hours per week at a rate of \$15 per hour. The claimant's husband's net pay per week was approximately \$325.
10. The claimant and her husband's net monthly income was approximately \$4,192.50.
11. While working for the employer, the claimant was making a loan payment to the employer for her vehicle. The payment was \$100 per quarter (\$400 per

- year). (After her separation from work, the claimant paid the balance of the loan from her 401(k).)
12. The claimant's daughter and son-in-law were named as leasing the home in [Town B], Massachusetts. Their lease was due to expire on June 1, 2017.
  13. The landlord allowed them to remain in the house beyond that date, as monthly tenants, but they were required to move out of the home by August 7, 2017.
  14. The claimant's son-in-law received a job offer with an employer in North Carolina. The claimant's daughter and son-in-law decided to relocate to North Carolina, due to that job offer.
  15. The total rental amount at the home where the claimant was residing in [Town B], Massachusetts was \$1,650 per month, without utilities. The claimant felt that she and her husband could not afford to take over the lease when her daughter's family moved, because they could not afford the rent along with their other living expenses. In addition to the entire rental amount each month, the claimant's other expenses would increase to \$300 for heating, \$125 for lights, \$200 for cable, \$50 for renter's insurance and \$15 for water.
  16. The claimant also anticipated a rent increase of \$50 to \$350 per month had she remained in the home, as the landlord had made yearly increases of \$50 and she had also heard that the landlord was looking to increase the rent to \$2,000 per month.
  17. Once the claimant's daughter and son-in-law decided to move to North Carolina, the claimant and her husband began looking for affordable housing, as they felt they could not afford to remain in the home paying all of the expenses. The claimant had no one else to share rental costs with.
  18. The claimant and her husband attempted to locate new housing in [Town A], MA (or within a 30-minute commute), but they were unable to afford the rental costs, which were \$2,000 or more per month. The claimant also found that many of the houses were only being rented on a seasonal basis, from May to September.
  19. When looking for housing in the area, the claimant was looking for a two-bedroom home, as her disabled daughter (25 years old) would need to live with her and her husband. The claimant and her husband provide the support for their daughter. Their daughter receives food stamps in the amount of \$137 per month and \$300 per month in disability payments. The claimant's daughter utilizes her monthly disability payment to pay for her clothing and her cellular telephone expense. The claimant and her husband cover all of their daughter's housing expenses, including providing an additional \$75 per month for food, when exceeding her food stamp allowance each month.

20. The claimant felt that she and her husband would only be able to afford a maximum of \$1,200 per month in rent.
21. In addition to her two daughters, the claimant had two sons. One of her sons lived approximately one mile from the claimant. He lived with his wife and three children in a two-bedroom home. They did not have space for the claimant, her husband, and their disabled daughter to move in. The claimant's other son lived in Taunton, with his girlfriend, at his grandmother's home.
22. The employer had locations in Eastern and Central Massachusetts. In those areas, the rents were less expensive than the [Town A] area.
23. In May 2017, the claimant spoke to the Director of Stores regarding what was taking place with her housing, inquiring as to what options were available with the employer at other locations. (The claimant would have considered moving to another area of Massachusetts, where the cost of rent was less expensive.) The Director of Stores did not provide the claimant with any options.
24. The claimant and her husband decided to relocate to North Carolina, because housing was less expensive in that area.
25. The employer had other locations out-of-state, but each location was independently operated.
26. The employer has a leave of absence policy. The claimant did not request a leave of absence from the employer, because she intended her relocation to be permanent.
27. On June 15, 2017, the claimant notified the employer that she would be resigning her position to relocate to North Carolina, because her daughter and son-in-law were moving and she was unable to afford the rent on the Cape.
28. The claimant's husband located work in North Carolina in mid-July 2017.
29. The claimant's last day of work for the employer was August 3, 2017.
30. The claimant, her husband and their disabled daughter relocated to North Carolina on August 7, 2017. (They are currently residing in an apartment in North Carolina. The rent for that apartment is \$1,150 per month.)
31. The claimant's son-in-law, daughter and grandchildren also relocated to North Carolina at that same time, but are living separately from the claimant.
32. The claimant filed her claim for unemployment benefits on October 19, 2017. The effective date of the claim is October 15, 2017.

## 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. As discussed more fully below, we conclude that the review examiner's decision to award benefits is supported by the record and reasonable in relation to the evidence presented by the claimant.

Since the claimant resigned her position with the employer, we analyzed her eligibility under G.L. c. 151A, § 25(e), 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 these statutory provisions, the claimant has the burden to show that she is eligible to receive unemployment benefits. After hearing testimony from the claimant during the initial hearing, the review examiner decided that the claimant had carried her burden. Following our review of the entire record, we conclude the same.

As an initial matter, we note that the claimant has not shown that she resigned her position for good cause attributable to the employer. In good cause cases, the focus is on the employer's actions and on what the employer did to cause a claimant to quit her job. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Here, the claimant did not argue that the employer did anything which forced her to resign. Her reasons for leaving her job were personal, related to a loss of housing and inability to afford living on Cape Cod. Thus, the claimant has not shown that she quit her job for good cause attributable to the employing unit.

Because her reasons for leaving were personal, the more appropriate standard here is the one allowing benefits where a claimant shows that her leaving was involuntary for urgent, compelling, and necessitous reasons. "[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). To evaluate whether the claimant's reasons for leaving work were urgent, compelling, and necessitous, we must 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, 412 Mass. at 848. "Benefits are not to be denied

to those ‘who can prove they acted reasonably, based on pressing circumstances, in leaving employment.’” Norfolk County Retirement System, 66 Mass. App. Ct. at 765, *quoting Reep*, 412 Mass. at 851.

The Board has recognized that quitting due to a loss of housing or an inability to afford housing is an involuntary circumstance implicating the urgent, compelling, and necessitous language quoted above. *See* Board of Review Decision 0019 0117 03 (March 31, 2017); Board of Review Decision 0011 1712 09 (October 10, 2014); Board of Review Decision 0002 5282 31 (August 19, 2014).<sup>1</sup> In this case, the claimant was forced into a situation which was not of her own making. Her daughter and son-in-law decided to move to North Carolina, leaving her and her husband with significantly increased living expenses. Thus, the decision to move was forced upon the claimant. She did not voluntarily choose to move to an area which was beyond commuting distance to her job with the employer.<sup>2</sup> The claimant testified to what her living expenses would be if she and her husband remained in the Cape Cod area. The review examiner made findings pursuant to the claimant’s testimony, and those findings indicate that, had the claimant remained in or around Cape Cod, she and her husband would not have been able to afford her ordinary and necessary living expenses. *See* Consolidated Findings of Fact ## 6–10, 15–16. In light of the situation facing her, the claimant had little choice but to move away from Cape Cod, which necessitated her quitting her job.

We further note that the consolidated findings of fact show that the claimant did make some efforts to try to stay in Massachusetts and remain employed. Such preservation efforts are relevant when determining whether a separation is involuntary under the urgent, compelling, and necessitous standard. *See* Norfolk County Retirement System, 66 Mass. App. Ct. at 766. Here, the claimant made efforts to search for other, more affordable housing on Cape Cod but was unsuccessful in her attempts. Consolidated Findings of Fact ## 18–20. Although the claimant had other family in the area, there would have been no space for her, her husband, and her disabled daughter. Consolidated Finding of Fact # 21. In addition, the claimant spoke with the employer’s director of stores about a possible transfer, however, the director of stores did not provide the claimant with any other places to work.<sup>3</sup> Consolidated Findings of Fact ## 22–23. In short, the claimant made reasonable efforts to stay working but found no viable solution other than to move to a place with a lower cost of living.

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<sup>1</sup> These Board decisions are unpublished, but available upon request. For privacy reasons, identifying information is redacted.

<sup>2</sup> *See* DUA Service Representative Handbook Section 1211(A), which notes: “If the claimant moved beyond commuting distance for an urgent, compelling, and necessitous reason, treat this as an involuntary leaving,” rather than as a voluntary, and disqualifying, situation.

<sup>3</sup> During the first hearing, the claimant and the review examiner spoke about the transfer issue, and the claimant indicated that the employer did not offer any transfers to other locations. During the remand hearing, the employer’s witness testified to other store locations, as well as the lower costs of living near those locations off of Cape Cod. The claimant then testified to conversations she had with the director of stores (who did not testify at either hearing). It is not clear why the claimant did not mention such conversations at the first hearing. Nevertheless, the findings show that the review examiner believed the claimant’s testimony. The review examiner clearly found the claimant’s testimony to be credible, including the testimony about her efforts to look into a transfer as well as her household expenses. We will not disturb the findings. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996).

We, therefore, conclude as a matter of law that the review examiner's decision to award benefits to the claimant due to urgent, compelling, and necessitous circumstances is supported by substantial and credible evidence and free from error of law, where the claimant has shown that her decision to quit her job and move to North Carolina was due to her inability to afford living on Cape Cod close to her job after her daughter and son-in-law decided to move away.

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning July 30, 2017, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 24, 2018**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

**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.

SF/rh