

After separating from another job where he experienced discrimination, the claimant was not ready to get back into the workforce due to his anxiety and depression. He quit working at the employer's assignment after only four days. Under the specific circumstances here, the Board held that his departure was involuntary for urgent, compelling, and necessitous reasons.

**Board of Review
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Issue ID: 0024 0444 96

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 his position with the employer on December 11, 2017. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 15, 2018. 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 April 19, 2018. 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, he 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 obtain further evidence about the claimant's medical condition and ability to work at the time he separated from the employer. 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 decision, which concluded that the claimant is ineligible for benefits under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the record after remand shows that the claimant was not mentally fit to work at the time of his separation.

Findings of Fact

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

1. The claimant worked full-time as a Driller for company “[A]” for approximately seven years, until 1/8/16.
2. The claimant worked for the instant employer, a temporary staffing agency, after 1/8/16. He performed work in a warehouse for the employer’s client, “[B]”. This was fast-paced work.
3. The instant employer’s client, “[B]”, hired the claimant, permanently, and the claimant worked for company “[B]” from 10/1/16 to 4/15/17.
4. The claimant quit his employment with [B]” and returned to work for “[A]”. The claimant worked for company “[A]” from 5/14/17 to 11/16/17, when he quit his employment.
5. The claimant experienced discrimination while working for company “[A]”. The claimant found it hard to trust people after working for company “[A]” and experiencing discrimination.
6. The claimant felt worried and upset and was irritable after experiencing discrimination at company “[A]”.
7. The claimant visited his primary care physician and was prescribed anti-depression medication on 8/10/17. The primary care physician recommended he seek mental health treatment from a mental health professional.
8. The claimant did not seek mental health treatment, as he is a private person. He took the above anti-depression medication for approximately one month, then stopped taking the medication.
9. The claimant worked full time as a Materials Handler, for the instant employer’s client, a manufacturing company, from 12/4/17, to 12/11/17. He earned \$14.11 per hour working for the instant employer.
10. The employees who worked for the above client company reminded the claimant of the employees who worked for company “[A]”, as they are white men, over fifty years of age, in management positions.
11. One of the employees who worked for the client company told the claimant he was watching the claimant, and the claimant did a great job.
12. Multiple supervisors who worked for the client company complimented the claimant on his work.
13. The claimant felt locked up while working at this client site. He felt that he got the wrong vibe, and felt that he was being judged.

14. The claimant received no discipline while performing work at this client site. The claimant's job was not in jeopardy before he separated from employment with the instant employer.
15. The claimant felt that the negative emotions he experienced after experiencing discrimination at company "[A]" continued while he worked for the instant employer between 12/4/17 and 12/11/17.
16. The employees who worked for the above client company did not discriminate against the claimant while he worked at the client site from 12/4/17, to 12/11/17.
17. On 12/11/17, the claimant spoke with the employer's Certified Personnel Manager and said he had personal issues and was not fit to work and was resigning from his employment.
18. The Certified Personnel Manager told the claimant to take care of himself.
19. The claimant did not tell the instant employer about any issues or problems he had while working for the employer's client between 12/4/17, and 12/11/17.
20. The claimant did not request a leave of absence to seek medical treatment before he resigned; nor did he request a new assignment.
21. The claimant thought he would get a bad reputation if he asked for time off or asked for a new assignment.
22. The claimant first sought treatment from a mental health professional on 2/20/18. He was diagnosed with generalized anxiety disorder and major depressive disorder, recurrent, moderate, at that time.
23. The claimant was not mentally ready to get back into the workforce after he separated from employment with company "[A]". The claimant was worried about responding negatively toward others and did not want to act in an inappropriate manner toward others.
24. The claimant believes he was mentally ready to get back into the workforce after he sought mental health treatment on 2/20/18.
25. The claimant would like to find a third shift security position that requires him to wear a uniform. He wishes to find a position in which he can make a difference that will give him a sense of pride.
26. The claimant filed an MCAD complaint against company "[A]" on 4/20/18.

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 original 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, based upon these findings, we reject the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant resigned from his employment, his eligibility for benefits must be analyzed pursuant to 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.

The express provisions of this section of law places the burden of proof upon the claimant.

We remanded this case to obtain evidence to better understand why the claimant left his job after four days without attempting to preserve his employment. After remand, the review examiner found that he was mentally unable to be in the workforce. *See Consolidated Finding # 23*. This finding is supported by further subsidiary findings of fact, which show the following. Beginning at least four months before he started working for the employer, the claimant sought medical treatment for depression in connection with discriminatory treatment he was experiencing at his former job with company [A]. *See Consolidated Findings ## 6 and 7; Remand Exh. 7*. Although the claimant did not immediately follow through with his primary care physician's recommendation to see a mental health professional at the time, he did at least try anti-depression medication. *See Consolidated Findings ## 7 and 8*. He finally left company [A] on November 16, 2017. *Consolidated Finding #4*. Less than three weeks later, he started his assignment with the employer's client. *See Consolidated Finding # 9*. The review examiner further found that, during this time, the claimant found it hard to trust people because of the discrimination experienced at company [A]. *See Consolidated Finding # 5*. The client company employees reminded him of the people at company [A], and, although they did not discriminate against him, he felt judged and continued to feel the negative emotions he had experienced working at company [A]. *See Consolidated Findings ## 13, 15, and 16*. Within four days, he quit, informing the employer that he was not fit to work. *Consolidated Finding # 17*.

There is nothing in the consolidated findings to indicate that the employer did anything wrong. In fact, supervisors and an employee at the client company complimented him on his work. *See Consolidated Findings ## 11 and 12*. For this reason, we agree that the claimant has not shown good cause attributable to the employer to resign within the meaning of G.L. c. 151A, § 25(e)(1). However, we do believe the record shows that the claimant resigned under 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) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work).

Here, the record shows that the claimant’s emotional issues rose to the level of generalized anxiety disorder and major depressive disorder. *See* Consolidated Finding # 22. Although not formally diagnosed until February 20, 2018, we can reasonably infer from the primary care physician’s prescription for an anti-depressant in August, 2017, that the claimant had been experiencing symptoms of these medical conditions earlier than February, 2018. The claimant also presented a letter from his therapist describing how the claimant was feeling at the time he worked for the employer in December. *See* Remand Exhibit 6.¹ Based upon this evidence and the claimant’s testimony, the review examiner found that after leaving company [A], the claimant was not mentally ready to return to the workforce. Consolidated Finding # 23. In other words, when the claimant started working for the employer, he was not mentally capable of doing so. Under these circumstances, we believe his departure was beyond his control, attributable to an urgent, compelling, and necessitous medical condition.

In her original decision, the review examiner concluded that the claimant did not take reasonable steps to try to preserve his employment before quitting, such as seeking a leave of absence or another assignment.² However, the Massachusetts Appeals Court has stated, “it is not necessary that a claimant seeking to prove that she left her job involuntarily establish that she had ‘no choice to do otherwise’ . . . unemployment compensation benefits should not be denied to one who leaves her employment for what she reasonably believes are compelling reasons The relevant standard is the claimant’s ‘reasonable belief’ . . .” Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting* Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 284 (1985). We are to evaluate the circumstances on a case-by-case basis. Norfolk County Retirement System, *supra*, at 768.

During the remand hearing, the claimant testified that he did not know that he could ask for time off.³ Because Consolidated Finding # 23 shows that the claimant was unable to be in any workplace when he quit on December 11, 2017, there would have been no point in asking the employer for a different assignment. Under these circumstances, we believe the claimant acted reasonably in simply resigning.

¹ The therapist’s letter, Remand Exhibit 6, states that, when the claimant quit on December 11, 2017, “[he] did not feel he could work for another agency at that time due to his mentality from his experiences at the drilling job, which is why he sought therapy eventually.” While not explicitly incorporated into the review examiner’s findings, this letter is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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* the review examiner’s original decision, Remand Exhibit 1.

³ This testimony is also part of the unchallenged evidence in the record.

We, therefore, conclude as a matter of law that the claimant's separation from employment was due to 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 December 3, 2017, and for subsequent weeks if otherwise eligible.⁴

Pursuant to G.L. c. 151A, § 14(d)(3), benefits shall not be charged to the employer's account, but shall be charged to the solvency account.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 31, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

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⁴ Given the evidence in the record, the DUA shall separately determine whether the claimant was eligible for benefits under a separate provision, G.L. c. 151A, § 24(b), in the period immediately after his separation from the employer.