

0025 1420 60 (June 28, 2019) – Claimant had urgent, compelling, and necessitous reasons to quit, as her car broke down, and she took reasonable steps to preserve when she looked into alternative transportation, but was unable to find a reasonable option.

Board of Review
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Issue ID: 0025 1420 60

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 April 3, 2018. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on March 23, 2019. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer's agent, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on April 23, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without either 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 give the claimant an opportunity to testify and present other evidence. The claimant and the employer's agent participated in 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 left work voluntarily and without good cause attributable to the employer or urgent, compelling and necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant lost the use of her vehicle and was unable to secure new transportation for work.

Findings of Fact

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

1. The claimant worked full-time as a program manager for the instant employer, a human service agency, from 10/29/17 until 04/03/18. The claimant's salary was approximately \$55,000 annually.
2. The claimant's position as a program manager required her to have her own vehicle in the event that she needed to transport clients to day programs or appointments. The claimant also had to attend staff meetings regularly.
3. The claimant resides in [Town A], MA. The claimant's work location is in [Town B], MA, which is approximately a 45-minute commute one way.
4. The claimant owned a 2002 Toyota Camry when she worked for the instant employer.
5. On or about March of 2018, the claimant began having car trouble.
6. On or about 04/01/18 or 04/02/18, the claimant's car completely broke down.
7. The claimant's neighbor is a mechanic and looked at her car. The claimant was informed that she would need to replace her engine.
8. The mechanic told the claimant that it wasn't worth replacing the engine, and she would be better off buying a new car.
9. The claimant could not afford a new car and does not have good enough credit to finance a new car.
10. The claimant notified the Assistant Program Director (APD) about her transportation issue.
11. The APD told the claimant that it was a must that she have her own vehicle.
12. The claimant asked for time off to see if she could find another means of transportation.
13. The ADP told the claimant it was her decision to make, but that she must show up for work and if she couldn't, she should find something else to do.
14. The claimant looked into public transportation, but there was not a bus route from her residence to her work location.
15. The claimant looked into an Uber, but it would cost approximately \$60 one way, which was not affordable.

16. On 04/03/18, the claimant submitted her resignation in writing effective immediately, and her reason stated, “I don’t have a car to come to work and there’s no bus route.”

17. The employer accepted the claimant’s resignation effective immediately.

Credibility Assessment:

At the initial hearing, the employer’s agent participated and testified on behalf of the employer. The employer’s agent provided hearsay testimony regarding the circumstances that led up to the claimant’s separation.

At the remand hearing, the claimant directly and credibly testified that her vehicle broke down and that she could not afford a new car. The claimant testified that she made the employer aware of her transportation issue and took steps to preserve her employment prior to submitting 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 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, we reject the review examiner’s legal conclusion that the claimant voluntarily left her employment without either good cause attributable to the employer or urgent, compelling, and necessitous reasons.

Because the claimant quit her employment, we analyze her eligibility for benefits 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.

There is no indication in the record that the claimant left her job due to a valid complaint against her employer. Therefore, the only issue before us is whether the claimant left work for urgent, compelling, and necessitous reasons, and whether she took reasonable steps to preserve her employment prior to leaving.

“[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). Even if the claimant had carried her burden to show that circumstances beyond her control were forcing her to resign, “[p]rominent among the factors that will often figure in the mix when the agency determines whether a claimant’s personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant had taken such ‘reasonable means to preserve her employment’ as would indicate the claimant’s ‘desire and willingness to continue her employment.’” Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597-98 (1974).

After remand, the review examiner found that the employer required that the claimant have a personal vehicle available to her in order to perform her job duties, including taking clients to appointments and day programs. The claimant also needed a vehicle to get to and from work, as she lived 45 minutes away from the employer’s job site. The review examiner found that, on or about April 1, 2018, or April 2, 2018, the claimant’s vehicle broke down, and her mechanic suggested that she was better off buying a new car rather than attempting to repair her vehicle. However, at that time, the claimant did not have the financial means available to purchase a new vehicle. The review examiner found that the claimant looked into alternative transportation to get to and from work, but there was no public transportation available on her route, and using rideshare services, such as Uber, would be too expensive for her. Furthermore, the employer did not allow the claimant an opportunity to take time off to make further efforts to resolve her transportation problems. In light of these consolidated findings, we believe that the claimant’s lack of transportation amounted to an urgent, compelling and necessitous reason to leave her job, and that she made reasonable attempts to preserve her employment prior to leaving.

We, therefore, conclude as a matter of law that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons, and, thus, she is not disqualified under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 7, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 2019



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.

SVL/rh