

**The claimant home health aide is eligible to receive unemployment benefits pursuant to the urgent, compelling, and necessitous provision of G.L. c. 151A, § 25(e), where she reasonably believed she could no longer physically perform her duties due to her pregnancy and her client's declining mobility, she asked the employer to be reassigned to a different client, and the employer had no other suitable assignments for her.**

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Charlene A. Stawicki, Esq.  
Member  
Michael J. Albano  
Member**

**Issue ID: 0026 8491 15**

## **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 separated from her position with the employer on or about July 6, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 15, 2018. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant via telephone, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on June 4, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left her 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). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have urgent, compelling, and necessitous reasons for leaving her employment, is supported by substantial and credible evidence and is free from error of law.

### **Findings of Fact**

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

1. The claimant began working for the employer as a per-diem home health aide in early June, 2018.

2. The claimant was assigned to work with one of the employer's client. The claimant worked approximately 20 hours per week at a rate of \$12.00 per hour.
3. The claimant was only assigned to one client.
4. When hired, the claimant was pregnant. The claimant was due in October, 2018. The employer informed the claimant it did not provide maternity leave.
5. The claimant felt her client's condition worsened and she was required to provide more care than expected. The claimant noticed the client at time[s] was unable to walk on his own and she was required to assist. The claimant felt the client was too heavy to assist while pregnant.
6. The claimant reported the client's change in condition to the employer.
7. In or around the end of June 2018, the claimant informed the owner she could not work with this particular client anymore. The claimant did not want to work with the particular client because he needed more assistance than expected and she did not want to get injured while pregnant. The claimant indicated the last day she could work with the client was July 6, 2018.
8. At no time was the claimant restricted by her doctor during pregnancy.
9. The claimant wished to continue working by providing care to other patients as a companion.
10. The claimant's last day working with the client was on or around June 30, 2018. At that time, the employer had no other clients to assign the claimant to.
11. The claimant effectively quit her employment when she withdrew from caring for her current client. The claimant quit because she felt she could not complete the job as assigned while pregnant.
12. The claimant filed a claim for unemployment benefits effective August 26, 2018.
13. In November 2018, the claimant's CNA license expired. The employer completed the renewal form indicating the claimant's last day of employment was June 30, 2018.

### Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. Finding of fact # 13 is inaccurate insofar as it states that this event occurred in November, 2018. The claimant actually

testified that this occurred in February, 2019, which is corroborated by the renewal form in question (Exhibit 7). In adopting the remaining findings, we deem 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 should be disqualified for unemployment benefits pursuant to G.L. c. 151A, § 25(e)(1). Rather, as outlined below, we conclude that the claimant's leaving was involuntary due to urgent, compelling, and necessitous reasons.

From the outset, we note that the claimant argues that she did not resign her employment but rather was discharged. The claimant's un rebutted testimony was that she asked to be removed from her assignment, but that the employer had no other assignments available for her<sup>1</sup>. In these circumstances, where the claimant was unwilling or unable to continue with her assigned job, and the employer did not offer the claimant an alternative assignment or a leave of absence, we agree with the review examiner's conclusion that the claimant effectively quit her employment.

Because the claimant left her employment for personal reasons, her eligibility for benefits is governed by 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 . . . .

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.

The claimant bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

Here, the claimant asserted she left her employment because she could no longer physically perform her job duties safely due to her pregnancy and her client's declining mobility. "[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). Our standard for determining whether a claimant's reasons for leaving work are urgent, compelling, and necessitous has been set forth by the Supreme Judicial Court. We must examine the circumstances in each

---

<sup>1</sup> 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).

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, 851.

The review examiner credited the claimant’s un rebutted testimony that her client’s mobility was declining, that she felt the client was too heavy to continue assisting while pregnant, and that she was concerned about injuring herself or her baby. Despite this, the review examiner concluded that the claimant was capable of continuing to work with her assigned client, and therefore did not have urgent, compelling and necessitous reasons for leaving her employment. We disagree.

While it is the review examiner’s role to weigh the evidence and determine the findings of fact, “[a]pplication of law to fact has long been a matter entrusted to the informed judgment of the board of review.” Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979). Here, the legal question is whether the claimant’s belief that she could not continue to work with her assigned client was reasonable. The reasonableness of the [claimant’s concerns] is a question of law. See Ducharme v. Comm’r of Department of Employment and Training, 49 Mass. App. Ct. 206, 208 (2000). The claimant testified that she requested a new assignment on or about June 30, 2018, and that her baby was due October 15, 2018. Although the claimant acknowledged that her doctor did not offer her any recommendations in regards to her employment, she testified that her client frequently stumbled or fell, requiring her to hold him up or lift him. It does not take medical expertise to determine that a woman who is approximately six months pregnant would have difficulty lifting an adult male, and that regularly doing so could potentially endanger the health of the fetus. In such circumstances, a reasonable person would err on the side of caution.

While we conclude that the claimant’s belief that she could not continue in her assignment was reasonable, our inquiry does not end there. The Supreme Judicial Court has held that 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. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). Here, the record indicates that the claimant made such a reasonable attempt. The claimant testified that, at the beginning of her employment, she inquired whether the employer offered pregnancy leave, and was informed that they did not. The record also indicates that the claimant did not intend to leave her employment, but rather that she merely asked for a different assignment. However, as the employer did not have any other work available for her, she became separated from her employment at that time.

We, therefore, conclude as a matter of law that pursuant to G.L. c. 151A, § 25(e), the claimant’s leaving was involuntary due to urgent, compelling, and necessitous reasons, as she reasonably believed that her pregnancy prevented her from physically continuing her assigned job.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending July 7, 2018, and for subsequent weeks if otherwise eligible. The employer may be relieved of charges pursuant to G.L. c. 151A, §14(d)(3), so long as they have complied with all applicable requirements of G.L. c. 151A.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 27, 2019**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
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](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.

JRK/rh