

A separation due to childcare issues is properly determined to be involuntary due to urgent, compelling, and necessitous reasons, rather than for good cause attributable to the employer.

**Board of Review
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Issue ID: 0027 1242 51

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 that the claimant is eligible to receive benefits, but on grounds which differ from those stated by the review examiner.

The claimant resigned from her position with the employer on July 17, 2018. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 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 overturned the agency's initial determination and awarded benefits in a decision rendered on January 3, 2019.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for good cause attributable to the employer and, thus, was not 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 employer's appeal, we accept the employer's application for review. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision to award benefits pursuant to G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the claimant separated from her position due to a lack of childcare.

Findings of Fact

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

1. The claimant worked for the instant employer as the full-time Internet Sales Manager from 6/13/2017 until her last physical day of employment on 7/17/2018.

2. The claimant had two children ages 5 and 2. While employed, the claimant paid \$200 a week for childcare for her 2 year old and no childcare for her 5 year old who was in school until the end of June 2018.
3. When the school year ended, the claimant needed childcare for her 5 year old and the cost was \$250 a week which the claimant was unable to afford.
4. The claimant had applied for a childcare voucher through the state, however, she had not been approved.
5. The claimant did not have any other family members or friends able to assist with childcare until her 5 year old returned to school in September.
6. The claimant spoke with her immediate supervisor, the General Manager, about a leave of absence until September, however, the General Manager told the claimant that it was the car business and people come and go.
7. The claimant also mentioned to the General Manager about the possibility of relocating to South Carolina.
8. The General Manager informed the claimant to call him in the future when she was available for work.
9. The General Manager does not know if a leave of absence could have been provided for childcare reasons, however, he would need to fill her position if she took time off for childcare.
10. After speaking with the General Manager about her lack of childcare, the claimant realized that she needed to resign due to lack of childcare.
11. The claimant spoke with the General Manager who instructed her to put that she was moving to South Carolina in her resignation notice instead of writing down the personal issues with childcare.
12. The claimant submitted her resignation effective 7/17/2018.
13. The claimant was subsequently approved for a childcare voucher through the state effective September, 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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we agree that

the claimant is eligible to receive benefits. However, we reject the review examiner's legal conclusion that the separation is for good cause attributable to the employer.

Because the claimant quit her position, 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 . . . [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.

By its terms, the statute provides that the claimant has the burden to show that she is eligible to receive unemployment benefits.

The review examiner concluded that the claimant had carried her burden to show that she separated from her job for good cause attributable to the employer. The good cause standard focuses on the employer's conduct, rather than on a claimant's personal reasons for leaving a job. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980). In this case, the claimant's separation resulted not from anything that the employer did to the claimant,¹ but due to the claimant's lack of childcare for the summer of 2018.² Therefore, we disagree that the good cause standard was applicable in this matter.

The claimant's personal situation triggers the urgent, compelling, and necessitous standard quoted above. "[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). Issues related to childcare can certainly constitute a situation which renders a separation involuntary. *See Manias v. Dir. of Division of Employment Security*, 388 Mass. 201, 204 (1983) (child care demands may constitute urgent and compelling circumstances) (citations omitted).

In this case, the claimant could not afford the \$250.00 childcare fee for her five year old son for the summer of 2018. She applied for state assistance, but it was not going to be available for her until the fall of 2018. She asked the employer about a short leave of absence. However, her supervisor suggested that one would not be possible, but that she could contact the employer

¹ We decline to hold, as the review examiner did, that the employer created good cause when it denied a leave of absence to the claimant for the summer of 2018. Given the staffing needs of the employer's business, its decision to deny such a leave was not unreasonable. Therefore, it did not create good cause to leave.

² There was some testimony and evidence that the claimant, who was pregnant, resigned to move out of the area, possibly to be with the father of her expected baby. The review examiner clearly heard this testimony. However, he explicitly found the claimant's testimony as to the reason for her separation to be more credible. We see no reason to disturb the credibility assessment contained within Part III of the decision. *School Committee of Brockton v. Massachusetts Commission Against Discrimination*, 423 Mass. 7, 15 (1996).

again when she was available to work. After taking these reasonable steps to try to keep her job, *see Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93–94 (1984), she made a reasonable decision to resign her employment.

We, therefore, conclude as a matter of law that the review examiner’s decision to award benefits is supported by substantial and credible evidence. However, the findings of fact support a conclusion that the claimant separated for urgent, compelling, and necessitous reasons, rather than for good cause attributable to the employer.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is entitled to receive benefits for the week beginning July 15, 2018, and for subsequent weeks if otherwise eligible. Because the separation is deemed to be involuntary, the employer may be relieved of charges on this claim pursuant to the provisions of G.L. c. 151A, § 14(d)(3), as long as it has complied with all reporting requirements of Chapter 151A.

BOSTON, MASSACHUSETTS
DATE OF DECISION – January 28, 2019



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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