

The claimant's resignation was involuntarily due to urgent, compelling, and necessitous personal reasons, where the claimant could no longer afford daycare services for her young children and her car had been repossessed. Other transportation and childcare options were not available and the employer did not have an alternative schedule available for the claimant at the time.

**Board of Review
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Issue ID: 0027 9948 98

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 December 10, 2018. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on February 15, 2019. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on April 12, 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). 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 in order to allow the claimant an opportunity to testify and provide other evidence. Only the claimant 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 left her employment voluntarily 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.

Findings of Fact

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

1. The claimant worked as a home health aide for the employer, a home health company, from May 2018 to November 2018. She lives in [City A], Massachusetts.
2. Home health aides communicate with the employer's scheduler about dates and times they are available to work, and schedulers offer home health aides work based on what the employer has available.
3. The claimant purchased a 2011 Chevy Traverse in late 2017/early 2018.
4. The claimant replaced the engine in the above vehicle three months after she purchased it. She found that the vehicle was not always reliable.
5. The claimant worked approximately thirty to fifty hours per week for the employer, until late September 2018, when a client passed away; she then worked approximately twenty hours per week.
6. The claimant reported to the employer that she did not work from 10/1/18 to 10/14/18, due to car trouble.
7. The claimant has three children, ages 4, 5, and 10.
8. The claimant was unable to pay for daycare and after school care for her children, and unable make car payments, as of 11/9/18.
9. The claimant reported to the employer that she was absent from work on 11/13/18, because she had no childcare that day.
10. The claimant informed the scheduler of her automobile trouble, and childcare issues, and asked to work nights, so that she could borrow her mother's car, and her mother could stay with her children at night.
11. On 11/19/18, the claimant reported to the employer that her automobile was repossessed, and she could not work for the employer.
12. The scheduler did not inform the claimant whether any night shifts were available as of 11/19/18.
13. The claimant filed an unemployment insurance claim on 11/23/18, and obtained an effective date of her claim of 11/18/18.
14. The claimant e-mailed the employer on 12/10/18, and stated that she resigned because she does not have childcare and because her automobile was repossessed, and she had no other way to get to work.

15. The claimant did not request a leave of absence to sort out her childcare and transportation issues before she resigned.

16. The claimant was unsure when she would obtain new transportation, and when she would be able to afford alternative childcare at the time she resigned.

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 left her employment voluntarily. Rather, we believe that the review examiner's consolidated findings of fact compel the conclusion that the claimant's separation was involuntary, due to urgent, compelling, and necessitous personal circumstances.

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.

Under this provision, the claimant seeking benefits bears the burden of proving that her separation was the result of either 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 contended that she left her employment because her loss of transportation rendered it impossible for her to commute to work, and because a lack of childcare rendered it impossible for her to leave her children to attend her scheduled shifts.


“[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). It is evident from the record that, prior to quitting, the claimant was no longer able to regularly appear for her scheduled shifts due to her lack of both transportation and childcare. We conclude that such circumstances constitute urgent, compelling, and necessitous reasons to establish that the claimant separation was involuntary.

To qualify for benefits, however, a claimant who involuntarily resigns from employment must also show that she 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 v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2009), *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–598 (1974). Here, several weeks prior to resigning, the claimant spoke to her supervisor to ask for a change to an evening schedule. This would have allowed for her mother to care for her children and for the claimant to borrow her mother’s car to get to work. *See* Consolidated Finding of Fact # 10. The employer indicated that an evening schedule was not available at that time. The claimant also testified that she contacted her children’s father to inquire about childcare assistance, and that public transportation was not available between her home and work locations.¹ At the time the claimant resigned, there was no end to her transportation or childcare issues in the foreseeable future. While one could argue that the claimant could have made other efforts prior to resigning, a claimant must only show reasonable efforts to preserve her employment — not that she had “no choice to do otherwise.” Norfolk County Retirement System, 66 Mass. App. Ct. at 766 (citation omitted).

We, therefore, conclude as a matter of law that the claimant left her employment involuntarily, due to urgent, compelling, and necessitous personal circumstances. Note that, pursuant to G.L. c. 151A, § 14(d), her benefits shall not be charged to the employer’s account but shall be instead charged to the solvency account.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week ending November 24, 2018, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 29, 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.

¹ 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).

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.

JRK/rh