

After his car broke down, the claimant had urgent, compelling, and necessitous reasons to leave his job, which was 85.1 miles away from his residence. He took reasonable steps to preserve his job when he used a rental vehicle until he could no longer afford it, and tried to carpool with a coworker. He did not request a transfer to a closer and accessible location or ask to use a company vehicle because he didn't think these were options for him, and the record indicates that his assumptions were reasonable.

Board of Review
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Issue ID: 0031 4295 21

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.

The claimant resigned from his position with the employer on June 20, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 11, 2019. 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 October 5, 2019. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons and, thus, was not disqualified under G.L. c. 151A, § 25(e). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's efforts to preserve his employment. 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 left his employment for urgent, compelling and necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where after remand the record establishes that the claimant lost the use of his vehicle due to disrepair and reasonably believed that he lacked a feasible means of preserving his employment.

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 as a full-time pipe fitter apprentice for the employer between 11/05/2018 and 06/20/2019, when he separated.
2. The claimant lived in [Town A], Rhode Island and was hired to work in [Town B], Massachusetts. The claimant's commute was 85.1 miles each way.
3. In approximately late May 2019, the claimant began having problems with his vehicle, including transmission and power steering issues. The steering locked up while the claimant was driving and the vehicle had to be towed. The cost to repair the power steering was \$1,200.00.
4. The claimant informed the owner of his vehicle problems.
5. The claimant obtained a rental car that he was driving to and from [Town B] for approximately one (1) month. The claimant could not afford to continue renting the rental car.
6. The claimant attempted to trade in his vehicle for another vehicle. The claimant could not do this because of his credit.
7. On approximately 06/20/2019, the claimant informed the owner that he could not continue working for the employer.
8. The claimant resigned because his vehicle continued to be in disrepair and he could not afford transportation to and from [Town B].
9. The employer had at least one other job. At the time of the claimant's separation, the claimant knew of one (1) other job site in [Town C], Massachusetts.
10. [Town C], Massachusetts was approximately forty-six (46) miles from the claimant's residence.
11. The claimant occasionally got rides to work from coworker A, who lived fifteen (15) minutes from the claimant. The claimant could not have found a consistent ride with coworker A to another job site because coworker A was having his own car problems and was not arriving to work on time.
12. The claimant did not request a transfer to another job site. The employer did not offer the claimant a transfer to another job site prior to the claimant's separation from employment.
13. The employer had four (4) company vehicles. One (1) was used by the owner and two (2) were used by pipefitters. The claimant did not request to use a

company vehicle. The employer did not offer the claimant to use a company vehicle prior to his separation from employment.

Credibility Assessment:

During the original hearing, the owner admitted that the claimant informed him of the car problems he was experiencing. However, during the remand hearing, the owner's testimony was not consistent with that from the original hearing, and the owner asserted that the claimant never brought to light that the claimant was having a transportation problem. The claimant maintained that he spoke with the president about his car issues. During the remand hearing, the president's testimony was vague about the other worksites and how far away the claimant's residence was. The claimant's testimony was more detailed about the one other job site in [Town C], and the problems he had carpooling with coworker A. Based upon the totality of testimony presented during the hearings, the claimant's testimony is found to be more consistent and detailed than that of the owner.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. We also concur in the review examiner's decision to award the claimant benefits.

Because the claimant resigned from his position with the employer, his eligibility for benefits must be analyzed 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.

The express language in these statutory provisions places the burden of proof upon the claimant. Because the findings show that the claimant resigned from employment due to his vehicle being in disrepair and his inability to transport himself to his work, we agree with the review examiner that the claimant has not shown that he left employment for good cause attributable to the employer. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (to determine whether the separation was for good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving).

We also agree that the claimant met his burden to show he left for urgent, compelling, and necessitous reasons. “[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). 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 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. In the present case, we conclude that the claimant’s circumstances surrounding his transportation issues meet these standards.

In addition to the existence of urgent and compelling personal circumstances, efforts to preserve one’s employment must also be considered when deciding whether a claimant has left a job involuntarily. *See* Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 336 (1979); Norfolk County Retirement System, 66 Mass. App. Ct. at 766. In determining whether the claimant made sufficient efforts to stay employed, we must examine both the reasonableness of these efforts, and whether further efforts would have been futile under the circumstances. *See* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). We note that our consideration in this regard is guided by the statutory mandate that we construe the statute liberally, and that the claimant’s actions must be viewed through the lens of reasonableness under the circumstances. *See* G.L. c. 151A, § 74.

In her decision following the initial hearing, the review examiner awarded benefits after finding that the claimant’s vehicle fell into a state of disrepair, and that he was no longer able to transport himself the 85.1 miles to his job site. We remanded the case for additional evidence, as the specifics of the claimant’s efforts to preserve his job were not fully discussed during the original hearing. After remand, the review examiner found that, in an effort to preserve his employment after his car broke down, the claimant took a number of steps. He used a rental car until he could no longer afford it, and he unsuccessfully attempted to trade his car in for another vehicle. Additionally, the claimant tried carpooling with a coworker, but that coworker was unreliable and could not guarantee the claimant the necessary transportation. The review examiner further found that the claimant was only aware of one other job location through this employer, but it was 46 miles away in [Town C], MA.

During the original hearing, the claimant testified that he did not ask the employer about borrowing a company vehicle because he had only seen the licensed pipefitters use these vehicles, and the claimant was not licensed.¹ The claimant further stated that he was not aware of any job that was reasonably close to his residence, so that he could travel there on a daily basis via public transportation or some other means. While the better course of action would have been for the claimant to confirm his assumptions about the availability of a company vehicle or a closer job location, ultimately, the record before us does not establish that either of these was a

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).

possibility for the claimant. A claimant need only show reasonable efforts to preserve his job — not that he had “no choice to do otherwise.” Norfolk County Retirement System, 66 Mass. App. Ct. at 766. Under the circumstances, we believe the claimant acted reasonably in believing that it would be futile to make further inquiry.

We, therefore, conclude as a matter of law that the claimant is not disqualified under G.L. c. 151A, § 25(e), as he involuntarily left employment for urgent, compelling, and necessitous reasons and took reasonable steps to preserve his employment before leaving.

The review examiner’s decision is affirmed. The claimant is entitled to receive benefits for the week ending June 22, 2019, and for subsequent weeks if otherwise eligible. Benefits shall not be charged to the employer’s account but shall be charged to the solvency account pursuant to G.L. c. 151A, § 14(d).

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 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.

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