

The claimant left employment to care for her ill father, as she was the only person available to care for him, and she took reasonable steps to preserve her employment by looking into a leave, full-time home care, and a reduced schedule, before ultimately deciding that none of these options were feasible in her circumstances. Her separation was qualifying under G.L. c. 151A, § 25(e), due to urgent, compelling, and necessitous circumstances.

**Board of Review
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Issue ID: 0032 0714 77

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 August 13, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 2, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 5, 2019. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left 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 to obtain additional evidence pertaining to the claimant's efforts to preserve her employment prior to resigning. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his 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 failed to take reasonable steps to preserve her employment, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant quit her employment because after researching costs, she did not believe she could afford full-time care for her ill father, whose recovery would take approximately one year.

Findings of Fact

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

1. At all relevant times, the claimant lived with her father (father).
2. From January 2012 until August 13, 2019, the claimant worked for the employer, a health care provider, as a full-time revenue cycle specialist (40 hours weekly).
3. The claimant earned \$21.00 hourly from the employer.
4. The claimant has one brother that is mentally ill and lives in a group home.
5. The claimant has one son that lives 1.5 hours away from the claimant and one son that lives in Minnesota.
6. Sometime in 2013, the father was diagnosed with pancreatic cancer. For a short period of time, the father had home hospice care.
7. Sometime in 2016, the father suffered gastrointestinal bleeding (GI bleeding) and was hospitalized. The father was treated for the GI bleeding by surgery and released from the hospital within a week.
8. In the summer of 2017, the father was diagnosed with bladder cancer and [had] his bladder removed.
9. Sometime in 2017, the claimant asked the employer for reduced work hours so that she could be more available for her father. The employer denied her request.
10. Sometime in early August, 2019, the father again suffered GI bleeding and was hospitalized. The father was treated by surgery and released from the hospital shortly.
11. On August 13, 2019, the father began to have GI bleeding again and needed surgery for the bleeding. During the operation, the father suffered a right brain stroke that affected the father's left side of his body. The father is left-handed.
12. After learning about the stroke, the claimant decided to quit her employment with the employer in order to care for the father and to collect unemployment benefits.
13. The claimant quit on August 13, 2019, effective immediately, so that she could take care of the father.

14. After the stroke, the father's doctor told the claimant that the father's best chance for recovery was if he began to recover within six months and that this recovery process would take approximately one year.
15. After the father was released from the hospital, for the first few weeks back home, an occupational therapist (OT) and a physical therapist (PT) made visits to the claimant's home to treat him. The OT and PT stopped visiting after a few weeks because the father's health insurance did not cover any further treatments.
16. The claimant did not ask the employer for a leave of absence for FMLA, even though the employer told her she could apply for them.
17. The claimant was not available for a reduced work schedule at the time she quit.
18. The claimant did not request a reduced work schedule from the employer at the time she quit because she believed the employer would deny her request again.
19. The claimant did not consider having a nurse, home health aide, or anyone else to assist the father at home because of perceived expenses. The claimant performed cursory research on these services and concluded that she would have to pay \$300.00 to \$500.00 a day, which she believed she could not afford.
20. The claimant explored the possibility of a long-term care facility for the father but would have to pay \$300.00 to \$500.00 a day.
21. The father has no interest in going to a long-term care facility.
22. The father's health insurance does not cover long term care.
23. The claimant did not ask the employer for personal leave, even though the employer told her she could apply for personal leave. She did not ask the employer for personal leave because she felt her duties would be delegated to other employees and because getting personal leave "would not get me a paycheck".
24. At the time the claimant quit, she did not feel her job was in jeopardy.
25. At the time the claimant quit, she had, at most, one day of paid leave available to her.
26. After she quit, the claimant began caring for her father on a 24/7 basis. She would clean after the father, empty his urinal, feed him, cloth[e] him, drive him, and bathe him.

27. On September 6, 2019, the claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA), with an effective date of September 1, 2019.
28. On September 20, 2019, the father was diagnosed with cachexia.
29. The claimant did not look for work when she quit, initially.
30. After she quit, the father's condition began to improve, as he had more use of his left leg.
31. The claimant felt that she was available to work when the father's health improved.
32. On December 18, 2019, the father fell at home and fractured his left hip.
33. After the fall, the claimant felt that she was not available to work and did not trust the father being alone. She is afraid the father will wander around and injure himself.
34. The claimant believed that she could not find a job in her field for the third shift but looked at different fields. After the fall, the claimant did not look for work for the third shift.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We set aside the portion of Consolidated Finding of Fact # 12, which states that the claimant quit her employment to collect unemployment benefits. The remainder of that finding and Consolidated Finding # 13, along with the totality of the evidence in the record, establish that the claimant resigned in order to take care of her ill father. We also add to Consolidated Finding # 23, that the claimant did not request Family and Medical Leave (FMLA) for the same reasons stated here regarding why she did not request a personal leave.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we believe that the findings support an award of benefits to the claimant.

Since 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:

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).

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.

After remand, the review examiner found that the claimant resigned from her job in August, 2019, to take care of her father, who has cancer and suffered a stroke during a medical procedure. Since that time, the claimant has assisted her father with his daily life activities, such as eating and showering. The claimant was the only family member available to care for her father, as her only brother did not have the capacity to take care of someone, and the claimant's two children lived too far away to provide any assistance. In his original decision, the review examiner did not arrive at a conclusion as to whether the claimant was facing urgent, compelling and necessitous circumstances that required her to immediately separate from her employer.

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 v. Comm'r of Department of Employment and Training, 412 Mass. 845, 848, 851 (1992). "[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). Domestic responsibilities such as the care of a family member may constitute urgent and compelling reasons which make a resignation involuntary under G.L. c. 151A, § 25(e)(1). *See, e.g.,* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983).

In light of the consolidated findings, which establish that the claimant's father had serious health problems requiring full-time care, we conclude that the claimant had an urgent, compelling and necessitous reason to separate from her employer on August 13, 2019.

Our inquiry into whether the claimant is entitled to unemployment benefits does not end there, however. The claimant must establish that she took reasonable steps to preserve her employment. Norfolk County Retirement System, 66 Mass. App. Ct. at 766. In his original decision, the review examiner concluded that the claimant did not take reasonable steps to preserve her employment, because she did not ask for a leave of absence or part-time work, and she did not take advantage of the home care her father was receiving. In arriving at these conclusions, the review examiner either did not take into account the portions of the claimant's testimony explaining why these options were not feasible for her, or he incorrectly applied the reasonable efforts standard.

To be eligible for benefits, an employee is expected to make reasonable attempts to preserve her employment. She is not required to request a transfer to other work or a leave of absence. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). Additionally, it is not necessary for the claimant to show that she had "no choice," but to quit. Norfolk County Retirement System, 66 Mass. App. Ct. at 766. Here, the findings establish that the claimant took

various reasonable steps to preserve her employment. Although she ultimately chose not to request a personal leave or FMLA, the consolidated findings show that the claimant inquired of the employer the options available to her, so she clearly considered them before deciding that it was not the right choice for her. Since her father's doctor had explained that his recovery would take approximately one year, and it was not guaranteed that he would have significant improvement in the first six months, it was not unreasonable for the claimant to determine that a leave of absence without pay that could extend from six months to one year would not be a feasible option for her.

It was also not unreasonable for the claimant to believe that requesting part-time work would be futile, as the employer had previously denied her request for part-time work, and that would not have worked for her, anyway, as her father needed full-time care.

Finally, the claimant investigated obtaining full-time care for her father, but his health insurance did not cover such care long-term, and she determined it was not financially feasible for her to pay for it, after researching the costs involved. The review examiner notes in his findings that the claimant only performed "cursory research" on the home care option. This finding is accurate, but given the sudden and unexpected nature of her father's condition, it appears the claimant did the best she could to research her options in the limited time period available to her, which was reasonable as she dealt with her father's serious health crisis. We will not penalize the claimant for failing to perform lengthy research into her options, as the record suggests this was not feasible given the circumstances, and this is not what is required under the statute and current case law.

We, therefore, conclude as a matter of law that the claimant resigned due to an urgent, compelling, and necessitous reason, and we further conclude that she took reasonable steps to preserve her employment, as required under G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending September 7, 2019, and for subsequent weeks if otherwise eligible. In light of the findings regarding the claimant's availability and work search efforts, the DUA will be asked to investigate and issue a determination as to whether the claimant meets the requirements of G.L. c. 151A, § 24(b), as of September 1, 2019.

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 - March 11, 2020



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

(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