

The claimant quit his job involuntarily, for urgent, compelling, and necessitous reasons, where his sister kicked him out of her home, he could not find affordable housing around his work location, and he could not indefinitely stay with a niece who lived in public housing.

**Board of Review
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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 his position with the employer on August 30, 2019. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on October 23, 2019. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on November 14, 2019.

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 accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence regarding the claimant's separation from employment. Both parties attended the remand hearing, which took place over the course of two sessions. 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 to deny 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 was not able to find an affordable place to live within commuting distance to his work after his family members told him that he could not live with them any longer.

Findings of Fact

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

1. The claimant is originally from Puerto Rico. His mother passed away approximately 10 years ago and left her home to all of her children, including the claimant. The claimant lived in Puerto Rico before he began work for the employer. He accepted a job at the employer through a staffing agency assignment in 2015. He was then hired as a permanent employee in 2017.
2. The claimant worked as an Assembly Operator. He worked Monday through Friday from 7 a.m. to 3:30 p.m.. He earned \$13.39 per hour.
3. When the claimant began work at the employer, he lived with his sister and her domestic partner in [Town A], RI. The rent for the apartment was \$1,200 per month. They split the rent three ways. The claimant paid his sister \$400 per month for rent.
4. [Town A], RI is 10 miles from [Town B], MA, where the employer is located. It takes approximately 20 minutes to travel by car between [Town A] and [Town B].
5. The claimant does not have his own car. He commuted to work with his niece (Niece A) who also worked at the employer.
6. On April 10, 2019, Niece A sent the claimant a text message informing him that she and her boyfriend were going to get married and live together. She told him that they would move to another location and that she would not be able to provide him with transportation to work. She did not give him a date for when she would no longer be able to provide him transportation to work.
7. The claimant began to consider other means of transportation to work. There is no public transportation between [Town A] and [Town B]. A one-way ride share car between [Town A] and [Town B] costs approximately \$20.
8. The claimant continued to commute to work with Niece A. Niece A continues to work at the employer and has not yet married or moved.
9. The claimant began looking for apartments in [Town B], MA to live. He calculated he would be able to afford rent of between \$600 and \$700 per month. He set up an account on an on-line realty web site which sent him periodic emails about possible housing. The least expensive apartment he was able to find was \$1,200.
10. The claimant was willing to share an apartment. He asked coworkers if they were aware of any housing, including housing where they currently resided. His coworkers were not aware of any housing.
11. The claimant found rooms for rent in boarding houses. He did not pursue these room because he did not want to live in a boarding house.

12. In May, 2019, the claimant had a disagreement with his sister and she asked him to leave. He moved into the apartment of Niece B, who also lives in [Town A], RI.
13. Niece B's apartment is in a public housing development. The regulations in the housing development did not permit the claimant to live with Niece B but she allowed him to stay there anyway. Niece B has two young children. The claimant slept in Niece B's living room. He was not able to go to sleep until everyone else had gone to sleep.
14. Because of the public housing regulations which did not permit Niece B to have additional persons in her apartment, and because the claimant was not able to sleep until everyone else went to sleep, the claimant sought other housing.
15. The claimant continued to look for housing in [Town B] from May to August, 2019. He also looked for housing in [Town A]. He was not able to find any housing for less than \$1,200 per month.
16. The claimant's brother encouraged him to move back to their home in Puerto Rico.
17. In early August, 2019, the claimant decided he would move to Puerto Rico. He decided to move to Puerto Rico because he had no housing.
18. On August 19, 2019, the claimant gave the employer a letter of resignation with two weeks' notice. He informed the employer he was leaving to move to Puerto Rico.
19. The claimant last performed work for the employer on August 30, 2019.

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. As discussed more fully below, we conclude that the claimant has shown that he is eligible to collect unemployment benefits.

It was undisputed that the claimant resigned his position with the employer. G.L. c. 151A, § 25(e), 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 these statutory provisions, the claimant has the express burden to show that he is eligible to receive unemployment benefits. After hearing testimony from the parties during the initial hearing, the review examiner decided that the claimant had not carried his burden. Following our review of the entire record, including the evidence and testimony from both the original and remand hearings, as well as the consolidated findings of fact, we disagree with that conclusion.

As an initial matter, we note that the claimant has not shown that he resigned his position for good cause attributable to the employer. In good-cause cases, the focus is on the employer's actions and on what the employer did to cause a claimant to quit his job. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Here, the claimant did not argue that the employer did anything which forced him to resign. His reasons for leaving his job were personal, related to a loss of housing. Thus, the claimant has not shown that he quit his job for good cause attributable to the employing unit.

Because his reasons for leaving were personal, the more appropriate standard here is the one allowing benefits where a claimant shows that the leaving was involuntary 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). To evaluate whether the claimant’s reasons for leaving work were urgent, compelling, and necessitous, 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. Reep, 412 Mass. at 848 (other citations omitted).

It is important, at this stage, to note that the review examiner’s decision to deny benefits was based upon an error of law. The review examiner’s denial was based, in part, on his conclusion that the “claimant did not prove that he had no choice but to leave his employment.” Moreover, during the remand hearing, the review examiner asked the claimant directly whether he felt that he had no choice but to resign his job. Under well-accepted case law, a claimant does not have to show that he had no choice but to resign in order to carry his burden to show that he quit a job involuntarily for urgent, compelling, and necessitous reasons. The Appeals Court has stated the following:

Contrary to the employer’s suggestion, it is not necessary that a claimant seeking to prove that she left her job involuntarily establish that she had no choice to do otherwise. This statement disregards our cases which recognize that unemployment compensation benefits should not be denied to one who leaves her employment for what she reasonably believes are compelling reasons. The relevant standard is the claimant’s reasonable belief, and ordinarily the agency

must make findings as to the reasonableness of a claimant's belief that she left her employment for a compelling reason.

Norfolk County Retirement System, 66 Mass. App. Ct. at 766 (internal quotations and citations omitted). Generally, “[b]enefits are not to be denied to those ‘who can prove they acted reasonably, based on pressing circumstances, in leaving employment.’” Norfolk County Retirement System, 66 Mass. App. Ct. at 765, *quoting Reep*, 412 Mass. at 851.

With this legal standard in mind, we turn to the facts of the case before us. The review examiner found that the claimant “decided to move to Puerto Rico, because he had no housing.” Consolidated Finding of Fact # 17. Moving to Puerto Rico meant that the claimant could no longer work for the employer in [Town B], Massachusetts, and, thus, the claimant quit his position, effective August 30, 2019. Consolidated Findings of Fact ## 18 and 19. The Board has recognized that quitting due a loss of housing or an inability to afford housing may implicate the urgent, compelling, and necessitous standard. *See* Board of Review Decision 0019 0017 03 (March 31, 2017); Board of Review Decision 0011 1712 09 (October 10, 2014); Board of Review Decision 0002 5282 31 (August 19, 2014).¹

Here, the claimant lived with his sister in [Town A], Rhode Island and commuted to work each day with his niece, referred to as Niece A in the consolidated findings of fact. However, in May of 2019, the claimant's sister asked him to leave, and the claimant moved in with a second niece, who also lived in [Town A] (Niece B). The situation with Niece B, however, could not be a reasonable solution to his housing problem, as Niece B lived in public housing, and the public housing regulations prohibited the claimant from living there. Consolidated Finding of Fact # 14. Thus, the claimant was forced into a situation in which he had no permanent place to live. The decision to eventually move to Puerto Rico was caused not by his own actions but by his sister's insistence that he leave her house and the untenable living arrangement with Niece B.

The review examiner made specific findings about what the claimant could afford for rent, and whether he had any success in finding an affordable place to live. Specifically, the review examiner found that the claimant had previously been paying \$400.00 per month for rent. Consolidated Finding of Fact # 3. He probably could afford to pay up to \$700.00 per month, but he was only able to find apartments for \$1,200.00 in the [Town B], Massachusetts area.² Although he found rooms for rent in a boarding house, he did not want to live in a boarding house, and we believe this decision was reasonable. The claimant had no prior experience living in that type of housing, and it would not appear to have been a viable, long-term solution for him.³ In light of the situation which confronted him, the claimant reasonably decided that he

¹ These Board decisions are unpublished but are available upon request. For privacy reasons, identifying information is redacted.

² The claimant searched for new housing accommodations in [Town B]. We think that this was reasonable. Living close to his work location would have afforded the claimant the best opportunity to keep his job with the employer. Given that Niece A (the niece who was providing him transportation to work) had informed him that she was going to be moving out of the area of [Town A], *see* Consolidated Finding of Fact # 6, it makes little sense for the claimant to have searched for housing far from his work. Clearly, he had limited means of transportation and was trying to make it as easy as possible to remain employed.

³ Again, we note that the claimant needed to have acted reasonably under the circumstances. Considering that he looked into other, more appropriate housing options, choosing not to live in a boarding house does not undermine his argument that he left his job involuntarily.

needed to quit and move to where he had housing, in Puerto Rico, which, of course, was a locale outside of commuting distance to his job.⁴

The review examiner's consolidated findings of fact also show that the claimant made reasonable efforts to find a solution to remain in the area and continue working for the employer. Preservation efforts are relevant when assessing whether a claimant has left his position involuntarily. *See Norfolk County Retirement System*, 66 Mass. App. Ct. at 766. As stated above, the claimant took reasonable steps to stay in the area and keep his job. When his sister told him that he needed to leave, he went to live with Niece B. While he did that, he was searching for other housing options within commuting distance to his job's location. The claimant discovered that housing was too expensive, and he could not find a roommate to split the cost of an apartment (as he had previously done with his sister and her domestic partner). All of these actions show that the claimant was trying to stay employed. However, he found no viable solution to his housing situation, and he reasonably decided that he had to move to Puerto Rico, where he knew he had available housing.

We, therefore, conclude as a matter of law that the review examiner's decision to deny benefits pursuant to G.L. c. 151A, § 25(e)(1), is not supported by substantial and credible evidence and is free from error of law, because the claimant showed that he quit his job involuntarily for urgent, compelling, and necessitous reasons when he had to leave his stable living situation and was unable to find an affordable and viable housing option close to his work.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning September 1, 2019, and for subsequent weeks if otherwise eligible.

⁴ *See* DUA Service Representative Handbook Section 1211(A), which notes: "If the claimant moved beyond commuting distance for an urgent, compelling, and necessitous reason, treat this as an involuntary leaving," rather than as a voluntary, and disqualifying, separation.

In accordance with G.L. c. 151A, § 14(d)(3), as long as the employer has complied with the requirements of Chapter 151A and any associated regulations, the costs of benefits paid to the claimant on this claim shall not be charged to the employer's account.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 24, 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 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