

After her employer denied an earlier maternity leave, claimant's decision to leave her job due to the extreme pelvic pain that she experienced in her last six weeks of pregnancy was due to urgent, compelling, and necessitous circumstances. She is eligible for benefits under G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0032 5752 91

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 July 22, 2019. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on May 11, 2020. 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 December 19, 2020. 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, she 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 afford the claimant an opportunity to present evidence about the reasons for her separation. 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 was ineligible for benefits because she failed to establish a valid medical reason for leaving work, 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 filed an initial claim for benefits with an effective date of May 31, 2020 [sic].

2. The claimant worked full time as a homecare provider for the employer, a nonprofit human services organization, from February 21, 2017 until July 22, 2019, when she quit work.
3. The claimant worked Monday through Friday from 9:00 a.m. to 5:00 p.m.
4. The claimant was paid \$18.50 per hour.
5. The claimant's immediate supervisor was the Program Director.
6. The claimant worked at clients' homes. She was required to make three home visits a day. She provided services to autistic children up to the age of three.
7. The claimant was pregnant and due to give birth on September 7, 2019. The claimant had some complications with her pregnancy. She experienced extreme pelvic pain.
8. In June 2019, the claimant spoke with the Human Resource Director about taking an early maternity leave because of her pregnancy complications, which caused her pain. The claimant was provided with Family Medical Leave Act paperwork for her physician to complete.
9. On July 10, 2019, the claimant's physician completed the paperwork for the claimant to begin her leave at the time she gave birth and not prior. The claimant's physician provided the employer with a list of the claimant's work restrictions, which included a sitting break every 15 minutes, a bathroom breaks every 1-2 hours and a break to eat small amounts of food every 1-2 hours.
10. The employer agreed to accommodate the claimant's work restrictions.
11. The claimant's physician did not feel the claimant medically needed an early maternity leave.
12. The employer would not grant the claimant an early maternity leave of absence without a doctor's order.
13. The claimant experienced pain during her commute to and from work and while seated on the floor with her clients.
14. The claimant lived in [Town A], MA and she provided services to children in the [City A] area.
15. The closest clients to the claimant's home are in [Town B] and [Town C].
16. The claimant did not request to transfer to clients in closer proximity to her home.

17. At the time the claimant left work, the employer's closest clients to the claimant's home were in the [City A] area.
18. The claimant purchased a special pillow to sit on to try and alleviate her pain, but it did not correct the problem.
19. The claimant did not request a chair to sit on at a client's home for comfort because she worked with young children with short attention spans who tended to be more comfortable seated on the floor to receive services.
20. The claimant did not request a reduction in her work hours because she was not aware it was an option.
21. The employer has permitted other employees to work reduced schedules.
22. The employer did not offer the claimant a reduced schedule.
23. The claimant would have continued work if her hours were reduced.
24. On July 15, 2019, the claimant submitted her letter of resignation effective July 22, 2019. The claimant reported she was leaving work due to personal reasons, which she did not disclose details.
25. The claimant quit work due to the pain she experienced from her pregnancy during her commute to and from work and while sitting on the floor with her clients for long periods.
26. The claimant gave birth on August 31, 2019.
27. On November 4, 2019, the claimant electronically submitted a completed quit questionnaire to the Department of Unemployment Assistance. The claimant reported she quit work because she could not perform some of her job duties due to pregnancy complications. The claimant reported she was limited in her ability to drive daily every 2 hours and sit on the floor for up to 2 hours.
28. On May 11, 2020, the Department of Unemployment Assistance issued the employer a Notice of Approval of the claimant's eligibility to receive unemployment benefits under Section 25(e)(1) of the Law beginning July 21, 2019.

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. The claim effective date of May 31, 2020, in Consolidated Finding # 1 is an

error. Other findings show that the claimant separated in July, 2019, and the DUA's UI Online electronic record keeping system shows that her unemployment claim was effective November 3, 2019. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we believe the consolidated findings do not support the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant voluntarily left her employment, her eligibility for benefits is governed by the following provisions under G.L. c. 151A, § 25(e):

[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 . . . 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.

These statutory provisions place the burden of proof upon the claimant.

The review examiner concluded that the claimant's reasons for leaving her job were not for good cause attributable to the employer. When a claimant contends that 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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

In this case, the consolidated findings show that, before she resigned, the claimant provided medical documentation to the employer requesting accommodations in connection with complications she was experiencing during the last term of her pregnancy, including the need for frequent sitting, eating, and bathroom breaks while she worked. *See Consolidated Findings ## 7 and 9.* The employer gave her exactly what her physician requested. *See Consolidated Finding # 10.* However, because the claimant continued to experience extreme pelvic pain, she asked to start her maternity leave earlier than planned, but the employer refused without an updated doctor's order. *See Consolidated Findings ## 8 and 12.*

We cannot say that the employer acted unreasonably in declining to allow an earlier leave without a medical note from her doctor. For this reason, we agree with the review examiner's conclusion that the claimant has not established that she left work for good cause attributable to the employer.

Alternatively, the claimant may be eligible for benefits if she left work 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). Medical conditions are recognized as one such reason. *See Dohoney v. Dir. of Division of*

Employment Security, 377 Mass. 333, 335-336 (1979) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work). 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.

There is no question that the claimant was in the last trimester of her pregnancy and that she experienced extreme pelvic pain at times while she worked. *See Consolidated Finding # 7*. She was in pain while commuting to and from her home to the service area where her clients lived and while sitting on the floor working with her young clients. *See Consolidated Findings ## 13-15 and 18-19*. Her work required her to sit on the floor, because she was providing services to 1-3-year-olds, who did not have the attention span to sit at a table. *See Consolidated Finding # 19*. In short, the claimant resigned because she felt too much pain to keep working. *See Consolidated Finding # 25*. There is nothing in the record to suggest that this pain was not real or that commuting and performing these work activities had not become too difficult.

It is true that the claimant's physician decided there was no medical need to take an earlier maternity leave than her September due date. *See Consolidated Findings ## 7, 9, and 11*. However, this does not mean the claimant's decision to leave her job was not reasonable based upon pressing circumstances, (i.e., her own pain threshold). In order to meet the standard of proof for urgent, compelling, and necessitous circumstances, a claimant need not prove with medical evidence that her work caused her physical pain symptom. She may merely demonstrate a reasonable belief that it caused it. *See Carney Hospital v. Dir. of Division of Employment Security*, 382 Mass. 691 (Mass. 1981) (rescript opinion) (leaving work under a reasonable belief that her skin infection was caused by her work environment was sufficient to support a conclusion that the claimant's separation was involuntary under G.L. c. 151A, § 25(e)(1)). Given the medically documented need for accommodations to treat her pregnancy-related pelvic pain, and the finding that the pain had become extreme, we cannot conclude that the claimant acted unreasonably when she stopped working six weeks before she gave birth.

However, even if a claimant has established that circumstances beyond her control forced her to resign, "[prominent] among the factors that will often figure in the mix when the agency determines whether a claimant's personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant 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 Systems, 66 Mass. App. Ct. at 766, quoting Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597-98 (1974). Here, the claimant asked for an earlier leave of absence and, when that was denied, she bought a special pillow to try to alleviate the pain. But that did not help. *See Consolidated Findings ## 12 and 18*.

Although the consolidated findings indicate that the claimant might have been able to reduce her hours, she did not know this at the time, and the option was not offered to her when she asked for the earlier leave. *See Consolidated Findings ## 20-23*. A claimant is not required to exhaust every possible way of preserving her job. The legal standard is to make reasonable efforts. *See Fergione v. Dir. of Division of Employment Security*, 396 Mass. 281, 284 (1985) (claimant need not show

that she had no choice but to resign, merely that she had an objectively reasonable belief). The claimant's request to begin her maternity leave earlier and attempt to alleviate the pain while working with a special pillow were such reasonable efforts to preserve her employment.

We, therefore, conclude as a matter of law that the claimant separated from her job due to urgent, compelling, and necessitous circumstances within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning November 3, 2019, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Chairman



Michael J. Albano
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 28, 2021

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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.

AB/rh