

Claimant quit because her job duties were aggravating her back pain and she feared it would get worse. She took reasonable steps to preserve by seeking medical care, taking medication, and asking the employer to obtain a Hoyer lift that would ease the strain on her back as she carried out her duties. She is eligible for benefits due to urgent, compelling, and necessitous circumstances.

**Board of Review
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Issue ID: 0032 6900 96

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 September 27, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 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 January 10, 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, 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 back pain. 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 voluntarily left employment 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, where, after remand, the review examiner found that the claimant's medical condition was exacerbated by her job duties, and this was the reason why she quit her employment.

Findings of Fact

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

1. Sometime in March, 2018, the claimant complained of back pain and underwent an MRI. She was subsequently diagnosed with a “pinched nerve”.
2. Following the claimant’s diagnosis, she went to see a doctor approximately 10 times to complain about her pain. The doctor told her to walk, take ibuprofen, and use a heat pad.
3. The claimant had worked for a previous employer, a hospital, as a part-time admitting officer. The claimant’s last day at work for the previous employer was December 20, 2018.
4. The claimant stopped working for the previous employer after December 20, 2018, due to a meniscus tear and was on FMLA.
5. Sometime in May, 2019, the claimant was informed by the employer that she had taken too much leave and the employer had to fill her position with another individual.
6. From May, 2019 until September 27, 2019, the claimant worked as a part-time (12 hours weekly) personal care assistant for the employer, a disabled individual with cerebral palsy.
7. The claimant earned \$15.40 hourly while working for the employer.
8. The claimant did not have any other employment while employed with the employer.
9. The claimant had previous employment as a personal care assistant.
10. When the claimant visited the employer’s home to complete a job application, she did not get to look in the employer’s living area.
11. The employer does not have a Hoyer lift to assist him to get into and out of his bed.
12. Had the claimant knew [sic] the employer did not have a Hoyer lift, the claimant would not have accepted the position.
13. The claimant’s duties included moving the employer from his bed to the shower and back. The claimant also had to put the employer in a wheelchair, dress the employer, and move him to various locations. Lastly, the claimant had to help shower the employer.
14. The employer is about 170 pounds.

15. The employer's girlfriend occasionally asked the claimant to perform gardening duties at the employer's home. The claimant declined to perform the gardening duties.
16. Gardening duties were not part of the claimant's duties.
17. Sometime during her employment, the claimant experienced some back pain as a result of performing her duties with the employer, such as from moving the employer from his bed to his shower.
18. On a few occasions, the claimant suggested to the employer that he obtain a Hoyer lift, which would make moving him easier. The employer denied her suggestion, saying that he was "not ready for a Hoyer lift."
19. One of the claimant's duties is to put on the employer's medical socks on [sic], which were heavy and put a strain on the claimant's back.
20. On October 24, 2019, the claimant visited a nurse practitioner to complain about her back pain.
21. The claimant occasionally took ibuprofen and heating pads for her back pain, during her employment.
22. The claimant concluded that, due to her back pain arising from having to lift the employer several times a week, and fearing that her back pain would get worse if she continued to have to lift the employer, she had no choice but to quit her employment.
23. In early September 2019, the claimant gave notice of her resignation to the employer, effective September 27, 2019.
24. The claimant continued to work for the employer until September 27, 2019.
25. The claimant quit her employment with the employer on September 27, 2019.
26. The claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA) on November 14, 2019, with an effective date of November 10, 2019.
27. On January 14, 2020, the claimant went to the nurse practitioner to obtain a [sic] medical documentation, stating that the nurse practitioner had been treating the claimant since October 24, 2019; that the claimant had a history of back pain with multi-level spine degeneration and bulging discs; and that she recommended the claimant not lift anything heavier than 20 lbs.

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 reject the portion of Consolidated Finding of Fact # 19, which states that the employer's medical socks were heavy and put a strain on the claimant's back, as the claimant testified that the employer's legs were heavy and lifting them to put his socks on put a strain on her back.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. Furthermore, as explained more fully below, we believe that the review examiner's consolidated findings of fact support a reversal of his original decision to deny unemployment benefits.

Because the claimant resigned from her employment, her eligibility for benefits is governed by 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.

As noted by the review examiner in his original decision and in the consolidated findings, since the claimant did not quit due to a workplace complaint, the issue before us is whether she resigned from her employment for urgent, compelling, and necessitous reasons, and whether she took reasonable steps to preserve her employment prior to quitting. After reviewing the medical documentation that the claimant submitted to the Board of Review on appeal, and further questioning the claimant at the remand hearing, the review examiner found that she left her employment after concluding that her work duties were aggravating her back pain and fearing that continuing in the job would worsen her condition.

The medical documentation in record indicates that the claimant suffered from a history of back pain, spine degeneration and bulging discs, and was medically advised not to lift anything heavier than 20 pounds. The review examiner appears to have credited this medical documentation and incorporated it into her findings. *See* Consolidated Finding # 27. The consolidated findings also indicate that the claimant's medical issues dated back to 2018, when she was diagnosed with a pinched nerve after having an MRI performed. The review examiner further found that the claimant's job duties included moving the employer between his bed and shower in order to bathe him, putting him in a wheelchair, dressing him, and moving him to various other locations. The review examiner found that these job duties were aggravating the claimant's back pain by putting strain on her back. The claimant had determined that having a hoist lift to help move the employer could lessen the strain on her back and allow her to continue working, but the employer refused to

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).

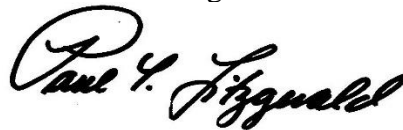
obtain the lift each time the claimant asked him to provide one for her to use. *See Consolidated Findings ## 1, 13-14, 17-18, and 22.*

The question before us is whether the claimant's medical condition as detailed in the consolidated findings constitute "urgent compelling and necessitous" circumstances within the meaning of the statute. "[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). However, even if circumstances beyond her control drove the decision to resign, the claimant must show that she first made reasonable efforts to preserve her employment. *See* Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. at 766. The Supreme Judicial Court has instructed us to 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.

Here, the consolidated findings establish that the claimant's job duties were negatively impacting her health by aggravating her back pain, and she reasonably believed that continuing in her employment would worsen her condition. Her job duties' negative effects on her medical condition created the type of pressing circumstances that rendered her departure involuntary. We further conclude that the claimant made a reasonable effort to remain employed. She sought medical care, treated her condition with ibuprofen and heating pads, and unsuccessfully tried to convince the employer to obtain a Hoyer lift, which would lessen the strain on her back when she lifted or moved the employer. Given the employer's refusal to obtain a Hoyer lift, and since taking medication or using a heating pad did not ease the strain her job duties were putting on her back, we believe the claimant's decision to resign was reasonable under the circumstances.

We, therefore, conclude as a matter of law that the claimant has established that she left her job for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e), and that, prior to doing so, she made reasonable efforts to preserve her employment.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending September 28, 2019, and for subsequent weeks if otherwise eligible.



Paul T.

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Fitzgerald, Esq.

DATE OF DECISION - March 30, 2020

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