

**The claimant left work for urgent, compelling, and necessitous reasons because she needed to provide care for her grandchildren after school and her mother who had Parkinson's. While the claimant did not request a leave of absence, such was not necessary because she was aware she would not have been eligible for a paid leave of absence and could not afford to take an unpaid leave of absence. Further, she reasonably believed that a transfer to a different position would either not accommodate her need to address her family responsibilities or would be unsuitable.**

**Board of Review  
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**Issue ID: 0032 9811 51**

#### 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 30, 2019. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 28, 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 March 13, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to establish that she voluntarily left employment for 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 information pertaining to the claimant's attempts to preserve employment. Both parties 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 was not entitled to benefits because she failed to request a leave of absence or schedule change before resigning, 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 worked full-time for the instant employer as General Manager from 5/27/2019 until her last physical day of employment on 9/30/2019.
2. The claimant worked approximately 50 hours a week. The claimant generally worked 10 a.m. to 8 p.m. or 2:00 p.m. to 11 p.m. The claimant earned salary that equaled \$24 an hour.
3. The claimant lives with her mother, her daughter, her two grandchildren and the father of the grandchildren.
4. Approximately a year prior to her separation, the claimant's mother was diagnosed with Parkinson's Disease.
5. The claimant's mother watched the grandchildren ages 12 & 15 when they got out of school.
6. The claimant's mother helped the grandchildren with homework and cooking dinner.
7. The father of the children got home at 8:30 p.m.
8. The claimant's mother's health declined due to Parkinson's Disease. She began to have difficulty making dinner and could no longer make dinner.
9. The health declining started when the claimant began working for the employer.
10. The claimant decided that she needed to be around to assist her mother with the grandchildren when they got out of school.
11. On 9/15/2019, the claimant gave the District Manager a typed resignation indicating her last day would be 9/30/2019.
12. The claimant told the District Manager that things were not working out because she wanted employment with banker hours and no uniform. The claimant stated that she wanted to look into a different career.
13. The claimant could have worked a set schedule of 7 a.m. to 3 p.m. or 7 a.m. to 4 p.m. but did not make any request to change her schedule.
14. If the claimant had requested a schedule change or different position, the employer would have looked into a position for the claimant to remain employed.
15. The claimant was aware the employer's hourly Shift [Manager] positions paid approximately \$17 an hour for 40 hours or less a week.

16. The job duties of the Shift Manager and the General Manager are similar in nature except with the General Manager having control over labor costs, food costs and other duties such as inspections.
17. The employer could have accommodated a transfer to a General Manager position at another restaurant, if requested, which would be for the same amount of hours.
18. The employer did not have any to [sic] another position comparable in pay or responsibilities at another restaurant that did not involve being a General Manager.
19. The claimant had worked as a Regional Operations [sic] for another employer prior to her employment with this employer.
20. The claimant oversaw four to eleven restaurants as a Regional Operations Manager.
21. The claimant did not attempt to request a leave of absence prior to resigning.
22. The claimant could not have afforded to take an unpaid leave of absence.
23. The claimant was aware of [sic] the employer provided leaves of absence however she was aware that she would not qualify for family related leave since she had only worked there about three months, not the twelve needed.
24. The employer could have offered the claimant unpaid leave while she addressed any family issues, however, the claimant could not afford to take unpaid leave.
25. The claimant could not afford to take a reduction in pay to work a lesser paying position with the employer.
26. The claimant told the employer of her family issue prior to resigning.
27. The claimant worked out her resignation notice, last working 9/30/2019.

### 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. We reject the portion of Consolidated Finding # 13 where the review examiner found that the claimant could have worked a set schedule of 7:00 a.m. to 3:00 or 4:00 p.m., because there is no evidence in the record suggesting such a schedule was available to the claimant at the time of her separation. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review

examiner's legal conclusion that the claimant was not entitled to benefits under G.L. c. 151A, § 25(e)(1), because she failed to take reasonable steps to preserve her employment.

Because the claimant quit her position, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), 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.

By its terms, the statute specifies that the claimant bears the burden to show that she is eligible for unemployment benefits. The record here does not indicate that the claimant left her employment as a result of any action taken by the employer. We, therefore, need not consider whether the claimant had good cause for leaving attributable to the employing unit or its agent under G.L. c. 151A, § 25(e)(1).

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 (1991).

The claimant left work because her mother could no longer provide after-school care for the claimant's grandchildren. Consolidated Findings ## 5, 6, 8, and 10. "[D]omestic responsibilities," such as childcare, "may constitute urgent and compelling reasons which make a resignation involuntary." Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983). In this case, the claimant and her daughter relied upon the claimant's mother to care for the claimant's grandchildren when they got home from school. Consolidated Findings ## 5 and 6. However, during the time the claimant was working for the instant employer, her mother's Parkinson's disease progressed to the point that she could no longer provide adequate care for the claimant's grandchildren. Consolidated Findings ## 4, 6, 8, 9, and 10. The claimant's uncontested testimony indicated that her mother's Parkinson's disease had progressed to the point that the claimant needed to provide some at-home care for her mother. The father of the claimant's grandchildren would arrive home from work at 8:30 p.m., and, thus, he was unable to provide the necessary care. Consolidated Finding # 7.<sup>1</sup> Under these circumstances, we believe that the claimant acted reasonably based on pressing family needs when she decided to leave her employment. However, we cannot award benefits on these grounds alone.

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<sup>1</sup> The claimant further testified that, prior to her resignation, she and her daughter discussed their employment and personal situations and determined that the claimant was in a better position to find more suitable hours or work with this or another employer. 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).

Where a claimant has shown that circumstances beyond her control have forced her to resign, she must also show that she “had taken such ‘reasonable means to preserve her employment’ as would indicate her ‘desire and willingness to continue her employment.’” Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2006), *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–98 (1974).

In his decision, the review examiner concluded the claimant had not taken reasonable steps to preserve her employment, in part, because she did not request a leave of absence. *See* Consolidated Finding # 21. However, the SJC has rejected the notion that an employee must always request a leave of absence in order to be eligible for benefits. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). In this case, the claimant was aware she would not qualify for a family-related leave of absence and could not afford to take an unpaid leave of absence. Consolidated Findings ## 22, 23 and 24. Under such circumstances, the claimant should not be disqualified from receiving benefits on the grounds that she failed to request a leave of absence.

The review examiner also reasoned that the claimant failed to take reasonable steps to preserve her employment because she did not ask the employer to look into changing her schedule. *See* Consolidated Finding # 13. However, a claimant does not have to show that she had no choice but to leave her job; she need only demonstrate that she took reasonable steps to preserve her employment or that further efforts would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984); Norfolk County Retirement System, 66 Mass. App. Ct. at 766.

In this case, the claimant informed the employer that she was having family issues prior to resigning. Consolidated Finding # 26. The employer testified that, when the claimant gave her resignation letter to the district manager, they had an open discussion about other suitable positions that would allow the claimant to work a more set schedule. Although they did not discuss the possibility of adjusting the claimant’s schedule, the employer indicated that if she transferred to a different general manager position, the claimant would have had to work the same hours.<sup>2</sup> Consequently, the claimant could reasonably believe that a transfer to a different general manager position would not have allowed the claimant to address her family responsibilities.

Moreover, as the General Manager, the claimant was aware that, if she were to transfer to another available position, such as the Shift Manager, she would experience a substantial cut in salary, responsibilities, and, possibly, hours. Consolidated Findings ## 14, 15, and 16. Such a cut in pay and responsibilities would render the available positions unsuitable for the claimant. Thus, a transfer to a different position was not a reasonable alternative.

We, therefore, conclude as a matter of law that the claimant may not be disqualified from receiving benefits under G.L. c. 151A, § 25(e)(1), because her separation from employment was due to urgent, compelling, and necessitous reasons.

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<sup>2</sup> This testimony is also part of the unchallenged evidence before the review examiner.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week of September 29, 2019, and for subsequent weeks if otherwise eligible.



Paul T.

**BOSTON, MASSACHUSETTS**

Fitzgerald, Esq.

**DATE OF DECISION - June 5, 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 ordinarily thirty days from the mail date on the first page of this decision. However, due to the current COVID-19 (coronavirus) pandemic, the 30-day appeal period does not begin until July 1, 2020<sup>3</sup>. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the next business day following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://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.

LSW/rh

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<sup>3</sup> See Supreme Judicial Court's Second Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (coronavirus) Pandemic, dated 5-26-20.