The claimant reasonably believed that she was the best person to care for her sick child, and, therefore, she had to leave her job for an urgent, compelling, and necessitous reason. However, where an extended leave of absence was readily available and she did not pursue it, the Board held that she did not take reasonable steps to preserve her employment. She is ineligible for benefits under G.L. c. 151A, § 25(e).

Board of Review
19 Staniford St.
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Issue ID: 0033 1391 41

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 affirm.

The claimant resigned from her position with the employer on December 6, 2019. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on January 9, 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 February 15, 2020. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without either 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 give the claimant an opportunity to provide evidence. 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 voluntarily left employment without either 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 resigned in order to care for her ill child, but she did not request an extension of her leave of absence or take any other steps to preserve her employment.

Findings of Fact

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

1. On August 29, 2017, the claimant started working for the employer, a municipal school district, as a full-time paraprofessional. The claimant was scheduled to work Monday through Friday from 7:50 a.m. – 2:20 p.m. The claimant was paid $22 per hour. The claimant worked at an elementary school.

2. The claimant's supervisor was the school principal.

3. The claimant applied for a childcare voucher while she was pregnant. The claimant was put on a wait list for the childcare voucher.

4. The claimant's last date of work was on August 30, 2019.

5. After the claimant's last date of work, the claimant went out on a maternity leave of absence from the employer's establishment. This leave was requested by the claimant and approved by the employer. The claimant was scheduled to return to work from the maternity leave of absence on December 6, 2019.

6. The claimant gave birth to her child on September 11, 2019.

7. The claimant and the child's father both live with the child. The claimant is in a relationship with the child's father. The child's father usually works full-time Monday through Friday from 7 a.m. – 5 p.m. The child's father earns a higher salary than the claimant.

8. The claimant's child started to have medical issues. The child was diagnosed with Gastroesophageal Reflux Disease without Esophagitis and Allergic Enterocolitis. The child was prescribed gas relief drops and a special infant formula of Neocate for the medical issues. At one point, blood was also found in the child's stool. The child was crying and in pain due to the medical issues.

9. On November 27, 2019, the claimant enrolled the child in a daycare program as the claimant initially was intending to return to work for the employer in December 2019. The monthly tuition for the daycare was $1,716.00. The claimant, the child's father, and the claimant's father were all going to financially contribute to the daycare expense.

10. On December 6, 2019, the claimant sent the employer the following resignation e-mail:

    "After extensive consideration I've decided I have no choice but to leave my position at [school]. I am extremely saddened because I will miss all of my wonderful colleagues and students. Unfortunately, childcare is too great an expense for my salary. Along with the special dietary and allergy needs my son requires. I hope that if there is a position open in August that I would be able to

come back and rejoin the [school] family. Thank you for everything you've done for me over the last couple of years. I truly appreciate it."

11. The primary reason the claimant resigned from the employer's establishment was to care for her infant child who was experiencing medical issues.

12. The child's father could not care for the infant child with medical issues, as the child's father works full-time. There were no other family members available to care for the infant child with medical issues.

13. If childcare had not been an issue, the claimant would have resigned due to her child's medical issues. If childcare had not been issue, the claimant would not have resigned due to her own mental health issues. The claimant did not resign from her job due to her own mental health issues.

14. In light of the claimant's earnings with the employer, the claimant enrolled her child in a daycare with a full-time monthly tuition of $1,716.00 in December 2019, because the claimant was initially intending on returning to work for the employer. The claimant was not receiving child support payments. The claimant, the child's father, and the claimant's father were going to financially contribute to the childcare expenses. The claimant could have afforded the childcare expenses with the financial contributions of the child's father and the claimant's father.

15. The claimant did not make any attempts to preserve her job prior to [resigning].

16. The claimant did not ask the employer for an extension of her leave of absence.

17. The claimant did not ask the employer for another leave of absence once her maternity leave of absence expired. The claimant does not know why she did not ask the employer for another leave of absence. The claimant thinks she may not have asked for another leave of absence as the claimant ha[d] many things going on at that time.

18. A leave of absence would not have resolved the issues preventing the claimant from returning to work in December, 2019. A longer leave of absence may have helped the claimant issues preventing the claimant from returning from work [sic].

19. The employer would have considered extending the claimant's leave of absence. A lack of childcare is not a reason for which the employer would extend an employee's leave of absence. A medical issue to care for a child is a reason the employer would extend an employee's leave of absence, provided the claimant provided proper medical documentation to the employer. The employer would have [granted] the claimant an unpaid leave of absence for as much time as she needed, even in light of the fact that the claimant had already taken approximately three months of leave.

20. The employer did not do anything wrong with regards to the claimant's employment that led to the claimant's resignation from work.

21. On December 23, 2019, the claimant filed an initial claim for unemployment benefits.

22. The Department of Unemployment Assistance (hereinafter DUA) records list the employer's reporting method as Reimbursable.

23. The child is currently feeling better but continues to have medical issues. As of the date of the Remand Hearing Session, June 2, 2020, the claimant is able and available for evening work, as the child's father can care for the child in the evening. The claimant is currently anxious about leaving her child with other daycare providers due to the medical conditions of the child.

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 # 5 that states the claimant was scheduled to return to work on December 6, 2019. During the remand hearing, the parties agreed that the claimant was scheduled to return to work on December 4, 2019.[1] In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, in light of the consolidated findings establishing that the claimant did not take reasonable steps to preserve her employment, we agree with the review examiner's original conclusion that the claimant's separation from employment was disqualifying.

Since the claimant resigned from her employment in order to care for her infant child, we analyze her eligibility for benefits under G.L. c. 151A, § 25(e), which provides, in pertinent part, as follows:

> 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.

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

[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).

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), *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).

After hearing the claimant's testimony during the remand hearing and reviewing the medical documentation submitted by the claimant, the review examiner found that the claimant's primary reason for resigning from her employment was to care for her infant child, who had been diagnosed with gastroesophageal reflux disease without esophagitis and allergic enterocolitis. The claimant testified that her child's symptoms include pain that causes him to scream and cry, blood in the stool, bad gas and acid reflux that comes up in a projectile-like manner. The infant's doctors prescribed a special infant formula to treat his allergy and medication to treat his acid reflux and gas. The review examiner found that the claimant is anxious about leaving her child with a daycare provider due to his medical conditions, and the child's father could not care for the child while the claimant worked, because his work schedule conflicted with the claimant's schedule. Neither the claimant nor the child's father had any family members who could care for the child while the claimant worked. Finally, the review examiner found that the claimant did not take steps to preserve her employment, as she did not request an extension of her leave of absence from the employer prior to quitting.

The claimant did not present any medical documentation establishing that her child's medical conditions were so severe that a daycare provider would be unable to properly care for him while the claimant was at work. However, the lack of such medical documentation is not dispositive in this case. The claimant need only establish that she acted reasonably given her particular circumstances. The claimant testified that her child had only been in her care since he was born, and she simply did not feel comfortable leaving her child with someone else while he was still experiencing medical problems. Because it appears that the claimant has been her child's primary caregiver since he was born, and she has been dealing with his medical conditions from the start, we conclude that it was reasonable for her to believe that she was best equipped to recognize any symptoms of discomfort and distress in her child, and that she knew the best methods to employ to successfully soothe her child and prevent a worsening of his symptoms.

Although, as noted above, the claimant has established that she had an urgent, compelling and necessitous reason preventing her from returning to work, our inquiry does not end there. Even if the claimant has carried her burden to show that circumstances beyond her control were forcing her to resign, under Massachusetts law, a claimant needs to undertake "'reasonable means to preserve her employment' as would indicate the claimant's 'desire and willingness to continue her employment.'" Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–98 (1974). "The reasonableness of the claimant's efforts should be evaluated in light of the relevant circumstances . . . ." Norfolk County Retirement System, *supra* at 769.

Here, it appears that other than placing the child in daycare, the only option available for the claimant to preserve her employment was to request for an extension of her leave of absence. The review examiner found that the claimant did not request an extension of her leave. The consolidated findings show that the claimant did not know why she failed to do so, but she believed that she just might have had a lot of things going on at the time. Consolidated Finding # 17. We do not find the claimant's explanation for not requesting an extended leave compelling. The record indicates that such an extension was a potentially viable means by which the claimant could have preserved her employment. The findings establish that if requested, the employer would have extended the claimant's leave and afforded her additional time to care for her child without separating from her employment. The claimant does not appear to have even contemplated pursuing this feasible option. Under these circumstances, we do not believe the claimant acted reasonably.

We, therefore, conclude as a matter of law that pursuant to G.L. c. 151A, § 25(e), although the claimant had an urgent, compelling and necessitous reason to separate from her employer, she did not take reasonable steps to preserve her employment.

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending December 7, 2019, and for subsequent weeks until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount .

BOSTON, MASSACHUSETTS Paul T. Fitzgerald, Esq.
DATE OF DECISION - June 25, 2020 Chairman

Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano declines to sign the majority opinion.

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[2]. 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.

[2] *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.

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