

The claimant had an urgent, compelling, and necessitous reason to quit, as his work environment was exacerbating his mental health disorders. He took reasonable steps to preserve before resigning, when he complained to his manager on multiple occasions and asked for time off, but the employer did not address his concerns and refused to grant additional time off.

**Board of Review
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Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant resigned from his position with the employer on April 23, 2020. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 22, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on September 30, 2020. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant left employment for urgent, compelling, and necessitous reasons and, thus, was not disqualified under G.L. c. 151A, § 25(e). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to make subsidiary findings from the record. 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 left work for urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where the consolidated findings establish that the employer's inspector's behavior exacerbated the claimant's mental health disorders and he attempted to preserve his employment on multiple occasions.

Findings of Fact

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

1. The claimant worked as a full-time Computer Numerical Code Machinist for the employer, a machining company, between 01/01/2010 and 04/23/2020, when he separated.
2. The claimant's direct supervisor was the General Manager (Manager).
3. In 2012, the claimant began to be treated in a disrespectful manner by the Quality Inspector (Inspector).
4. The Inspector would yell and belittle the claimant when he produced products not approved by the Inspector.
5. The Inspector would slam parts down on tables or the floor because employees were not doing their job and startled the claimant while he had his hands in a machine.
6. The Inspector slammed an employee's toolbox shut to startle him because he thought he was sleeping.
7. The Inspector pushed a chair out from under an employee because he was provoked by the employee.
8. The Inspector slammed his arm into the claimant's back when passing by the claimant because the claimant was socializing with co-workers.
9. The claimant complained to the Manager about the Inspector's mistreatment approximately three (3) to four (4) times. The Manager replied that the Inspector did not mean anything by it.
10. The claimant began to make these complaints when the mistreatment from the Inspector became severe in the last two (2) years of employment.
11. The claimant believed the Manager was the only person he could go to for assistance on the matter of the Inspector's mistreatment.
12. The Owner generally refrained from discussing job-related matters with employees, as he did not want to put his "two cents" into these matters.
13. The claimant also informed his coworkers, wife and psychiatrist of the Inspector's mistreatment.
14. In approximately 2014, the claimant began to experience anxiety, depression and panic attacks [sic].
15. The claimant's symptoms include shortness of breath, not being able to fill his lungs with air, tingling sensations in his hands and face, hypertension in his

hands, loss of concentration, headaches, memory loss, feeling like he is suffocating, and having suicidal thoughts.

16. In 2014, the claimant was diagnosed with anxiety disorder, panic, and depression from extreme stress and chemical imbalance in the brain. The claimant received treatment in an in-patient treatment facility for five (5) days.
17. The claimant's anxiety, depression and panic attacks continue through the present.
18. The claimant's doctor suggested that he take a leave of absence from work because his work was worsening his condition.
19. The claimant would often be absent from work due to his medical conditions. The claimant would inform his Manager of the reasons for his absences.
20. The claimant would often experience symptoms such as panic attacks at work and would request a break from his Manager. The claimant would inform his Manager of the reasons for his absences.
21. The claimant asked for a week off. The Manager granted the week off but informed the claimant that he cannot have any additional time off.
22. The claimant did not request a leave of absence.
23. On 04/23/2020, the claimant resigned from his employment because of the anxiety, panic and depression he experienced as a result of the stress and workplace environment.

Credibility Assessment:

The claimant's testimony regarding the treatment that he endured, and the conduct witnessed of the Inspector is deemed to be more credible than that of the employer. During the hearing, the claimant provided forthcoming and detailed testimony that he constantly endured disrespectful behavior from the Inspector, he would belittle and yell at him, slam parts down on tables, and most recently purposely slammed his arm into the claimant's back. Although the Manager testified that he was unaware of any of the aforementioned conduct of the Inspector, and the Inspector denied all allegation of such behavior when questioned by the Review Examiner, the Inspector provided inconsistent testimony during cross examination and admitted to some of the behavior that he previously denied. For example, the claimant asked the Inspector if he intentionally slammed his arm into him when passing by and the Inspector replied, "maybe a little," because the claimant was socializing rather than working at the time. The Inspector also admitted that he "probably regretted" the way that he spoke to people at work, slammed an item on the ground because an employee was not doing their job, pulled a chair out from someone who was

sitting on it when he was provoked by the employee, and slammed an employee's toolbox to startle him when he believed that the employee was sleeping. Given the above, it is reasonable to believe that the claimant endured and witnessed such behaviors displayed by the Inspector in the workplace.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented.

Because the claimant left his employment, we will analyze his separation under 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.

When a claimant leaves his employment, he bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

Here, the review examiner found that the claimant had been diagnosed with anxiety, depression and panic attacks in 2014, and he resigned from his employment because the stress he experienced at work from his interactions with the inspector was exacerbating his symptoms. Although the record in this case contains evidence that the inspector acted inappropriately toward the claimant and other employees, the evidence is not sufficient to establish that his specific conduct toward the claimant amounted to good cause for the claimant to leave his employment. Thus, we will consider whether the claimant left his employment 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). Here, the record establishes that the inspector’s brusque style when interacting with the claimant was exacerbating his mental health disorders. As a result, the claimant was experiencing severe symptoms, such as

shortness of breath, hypertension, headaches, memory loss, and suicidal thoughts. Based on the above, we agree with the review examiner's original conclusion that the claimant had an urgent, compelling, and necessitous reason to leave his employment.

However, in order to be eligible for unemployment benefits, prior to leaving, claimants must show that they took reasonable steps to preserve their employment. Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2006) (citation omitted). Because the review examiner's original findings were insufficient to establish that the claimant took reasonable steps to preserve his employment, we remanded this case to the review examiner to make subsidiary findings from the record pertaining to the claimant's efforts.

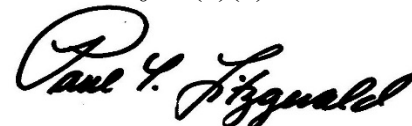
After remand, the review examiner found that during his last two years employment, the claimant complained to the manager about the inspector's behavior on approximately three or four occasions, but the manager did not do anything to address the claimant's concerns. The review examiner also found that the employer's owner generally refrained from discussing job related matters with his employees and did not want to weigh in on such matters. Based on this finding, it is not evident that approaching the employer's owner regarding the inspector's behavior, was a viable option for the claimant. The review examiner further found that the claimant's doctor had previously suggested that the claimant take time off to manage his symptoms, and the last time the claimant asked for time off, although it was granted, the manager informed the claimant that he could not have any additional time off. This finding indicates that pursuing a further leave of absence to address his health concerns, was also not a viable option for the claimant.

These consolidated findings establish that the claimant tried to preserve his employment in multiple ways and on multiple occasions prior to quitting, but his manager did not provide the necessary assistance, and there was no other person the claimant could appeal to, as the owner generally refrained from discussing job-related matters with employees. The consolidated findings also establish that the claimant would have been unable to obtain additional time in the form of a leave of absence. Thus, the findings and record before us suggests that any additional attempts by the claimant to preserve his employment would have been futile.

We, therefore, conclude as a matter of law that the claimant left his employment for urgent, compelling, and necessitous reasons, and he took reasonable steps to preserve his employment prior to leaving, as mandated by G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week ending April 18, 2020, and for subsequent weeks if otherwise eligible. Charges from the employer's account should be removed consistent with G.L. c. 151A, § 14(d)(3).

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 30, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, 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 contact the PUA call center at (877) 626-6800 and ask to speak to a Tier 2 PUA Supervisor.

**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