

The claimant, a veterinary hospital technician, resigned because she was afraid of exposure to COVID-19 due to her asthma diagnosis. However, her own physician merely recommended a quarantine for 14 days and then return to work wearing a mask. Held she did not show that she had good cause attributed to the employer or urgent, compelling, and necessitous reasons to resign. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e).

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 reverse.

The claimant resigned from her position with the employer on March 20, 2020. She filed a claim for unemployment benefits with an effective date of March 15, 2020. Her claim was later approved in a determination issued on March 8, 2021. The employer 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 awarded benefits in a decision rendered on November 17, 2022. We accepted the employer's application for review.

The review examiner determined that the claimant voluntarily left employment for urgent, compelling, and necessitous reasons and, thus, was not disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant resigned due to concerns about contracting COVID-19, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time as a veterinary technician for the employer, a veterinary hospital, from October 2, 2018, to May 20, 2020.
2. In August 2019, the claimant moved approximately 1 hour away from the veterinary hospital. The claimant commuted to work.

3. On February 26, 2020, the claimant submitted a handwritten letter of resignation to the employer stating her last day at work would be March 25, 2020. In discussions with her supervisor, the claimant stated her reason for resigning was because she wanted to seek employment in another field of work.
4. A couple days after the claimant submitted her letter of resignation, the claimant's supervisor and another supervisory veterinarian approached the claimant and asked if she would be willing to remain employed part time. The claimant retracted her resignation and agreed to continue working for the employer on a part time basis starting on March 25, 2020.
5. There was no end date placed on the claimant's part-time employment. The employer anticipated the claimant would work part time indefinitely.
6. The claimant has asthma and has treated with physicians for the condition since she was a child.
7. On March 16, 2020, the claimant was sent home with a fever and was instructed by her supervisor to come into work the next day if her temperature was normal.
8. On March 17, 2020, the claimant's temperature had returned to normal in the morning. The claimant sent a text message to her supervisor stating she would be at work. By the time the claimant arrived at work, the fever had come back. The claimant's supervisor instructed the claimant to again go home and was told she needed to be fever free for 72 hours before returning to work. The claimant and the supervisor also discussed the claimant's medical condition of asthma and the complications it could pose regarding the COVID-19 virus.
9. On March 18, 2020, [sic] claimant sent a text message to the practice manager, her supervisor and a supervisory veterinarian updating them on her temperature.
10. On March 20, 2020, while the claimant was still out of work, the claimant received a text message from the practice manager. The practice manager believed that the claimant had left her employment.
11. During the text message exchange between the claimant and the practice manager, the claimant decided to quit her job with the employer due to concerns regarding COVID-19 and her asthma. The message string read:

Practice manager: "Oh ok. So I thought you planned on not coming back, just due to everything. That's the reason I mentioned your balance. If you are, that's fine."

Claimant “No, I’m coming back. [Supervisor] instructed me to be fever free for three days and I’ve been fine. I’m sorry for the confusion.”

Practice manager: “Gotcha. No, no worries. Glad to hear it, actually!”

Claimant: “I wouldn’t leave like that without telling you guys.”

Practice manager: “Thank you. Although I respect everyone’s decision to do what they need to do to be safe.”

Claimant: “I personally don’t feel safe coming back bc of my health stuff but I also feel bad for not coming back bc I told you guys my last day is March 25. I was out this week bc of potentially being sick. So I feel kind of stuck.”

Practice manager: “Like I said – you do what you feel is best. Just let me know.” Claimant: “Thank you [practice manager]. I think at this point it might

just be best if I didn’t come back. And I’m sorry you guys thought that I wasn’t already but since we are talking about I think it wouldn’t make sense to come back. I’m really sorry it has ended this way. ...”

12. On March 24, 2020, the claimant sought treatment with her primary care physician who wrote in a Physician’s Statement of Capability that the claimant was unable to work full time since March 15, 2020, stating, “Due to COVID-19 risk and history of asthma, patient advised to wear a mask at all times after 14-day quarantine. After 14-day quarantine, then only with mask at all times.”

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 findings are supported by substantial and credible evidence; and (2) whether the review examiner’s conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we reject the review examiner’s legal conclusion that the claimant was entitled to benefits.

As the claimant resigned from employment, her separation is properly analyzed under the following provisions under G.L. c. 151A, § 25(e), which state, 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.

The express terms of these provisions place the burden of proof upon the claimant.

The claimant resigned her position because she was concerned about contracting COVID-19 at the workplace due to her asthma diagnosis. *See* Finding of Fact ## 6 and 11. On March 16, 2020, the claimant reported to work but was later sent home because she had a fever. Finding of

Fact # 7. She reported to work the next day but was sent home again due to her returning fever and was also instructed to not return to work until she was fever free for 72 hours. Finding of Fact # 8. On March 20, 2020, the claimant was texting the Practice Manager and stated that she would not return to work because she was worried about her health. *See* Findings of Fact ## 10 and 11. The claimant also testified at the hearing that she was concerned about getting COVID-19 from a co-worker, whose husband was potentially ill with COVID-19.¹ Because the claimant articulated, in part, reasons for separating attributed to the employer, as well as personal reasons for separating, we analyze the case under both the good cause attributable to the employer and the urgent, compelling, and necessitous provisions of G.L. c. 151A § 25(e).

When a claimant contends that her separation was for good cause attributable to the employer, the focus is on the employer's conduct, not on the employee's personal reason for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). To determine if the claimant has carried her burden to show good cause under G.L. c. 151A, § 25(e), we must first address whether the claimant's workplace complaint was reasonable. *See* Fergione v. Dir. of Division of Employment Security, 396 Mass. 281, 284 (1985) (claimant's belief that she was being harassed was not a reasonable one).

Although the claimant asserted that she was worried about her risk of COVID-19 exposure from another employee whose husband may have had the virus, the employer's veterinarian testified that she confirmed in a staff meeting that the husband did not have COVID-19. The claimant did not dispute this portion of the employer's veterinarian's testimony. As there was no indication that the claimant was exposed to COVID-19 at the workplace, this workplace complaint was not reasonable.

We next consider whether the claimant quit for an urgent, compelling, or necessitous reason. "[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 claimant's own physician recommended that she return to work after a 14-day quarantine and wear a mask at all times. *See* Finding of Fact # 14. Nothing in the physician's note or other medical documentation provided by the claimant suggests that the claimant could not return to work after the quarantine. It merely required the claimant to wear a mask. Inasmuch as the claimant has not demonstrated that her health conditions required her to stop working due to COVID-19, we can reasonably infer that she resigned due to a general fear 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).

contracting the virus. *See* Finding of Fact # 11. Such a fear does not constitute an urgent, compelling, or necessitous reason to quit.

Even if the claimant had demonstrated good cause attributable to the employer or urgent, compelling, and necessitous reasons to leave, she still must have make a reasonable effort to keep her job. The Supreme Judicial Court has held that a claimant who resigns from her employment must also show that she 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 System, 66 Mass. App. Ct. at 766, *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–598 (1974).

Upon review of the record, we believe that the claimant has not shown that she took reasonable steps to preserve her employment. During the hearing, the parties agreed that she never asked the employer if she could wear a mask, nor did she request other workplace accommodations. The claimant even conceded that she did not make any attempts to preserve her employment.² Absent specific evidence indicating the employer was either unable or unwilling to address the claimant’s concerns, we decline to conclude that any further attempt by the claimant to preserve her employment would have been futile.

We, therefore, conclude as a matter of law that the claimant has failed to carry her burden to show that she quit her job for good cause attributed to the employer or for an urgent, compelling, and necessitous reason pursuant to G.L. c. 151A § 25(e).

The review examiner’s decision is reversed. The claimant is denied benefits for the period beginning March 15, 2020, 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
DATE OF DECISION - August 29, 2023



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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)**

² This is also part of the unchallenged testimony in the record.

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.

MR/rh