

The claimant left one part-time job for another in May, 2020, due to a concern about exposing his fiancée to COVID-19 and because he had found his dream job. However, he did not live with his fiancée, who was at increased risk if infected by the virus due to her medical condition. He saw her only once a week outdoors. Held the claimant did not demonstrate urgent, compelling, and necessitous reasons for resigning as meant under G.L. c. 151A, § 25(e), and he is ineligible for benefits.

**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 his position with the employer on May 7, 2020. He was initially approved for unemployment benefits as part of his claim, effective March 15, 2020, but the DUA issued a determination on August 24, 2020, disqualifying him beginning May 3, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's determination and awarded benefits in a decision rendered on January 14, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for urgent, compelling, and necessitous reasons, and, thus, he was not 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 employer's appeal, we remanded the case to the review examiner to afford the employer an opportunity to present evidence and to ask the claimant further questions about the circumstances surrounding his decision to resign. 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 had urgent, compelling, and necessitous reasons to leave his employment, because his job would have jeopardized the health of individuals whom he lived with and who were at high risk of complications if exposed to COVID-19, 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 part-time approximately 19 hours per week as a residential counselor for the employer, a private boarding school, from approximately March 2018 to 4/22/2020.
2. The claimant's fiancée and his fiancée's mother have a blood disorder called beta thalassemia. This is a condition that reduces the amount of oxygen that gets into the blood.
3. As of March, 2020, the claimant was not living with his fiancée and his fiancée's mother.
4. The claimant's fiancée lived with her mother and the claimant lived with his family as of the middle of March, 2020.
5. From approximately the middle of March, 2020 to the middle of August, 2020, the claimant saw his fiancée and his fiancée's mother once a week. The claimant would deliver groceries to his fiancée and his fiancée's mother. These visits would mostly occur outside due to concerns regarding exposure to the COVID-19 virus.
6. As of approximately the middle of August, 2020, the claimant lived with his fiancée and his fiancée's mother two to three days per week. The claimant would take precautions such as showering and cleaning due to fears of bringing the COVID-19 virus to their home.
7. On or about 3/15/2020, all of the students at the employer's school left for their spring break.
8. The spring break for the students of the employer was extended due to the COVID-19 public health emergency.
9. The claimant was paid 26.9 hours of paid time off (PTO) and 6.2 hours of work around the first week of April 2020.
10. The claimant was paid for 16 hours for the period from 4/5/2020 to 4/11/2020 from a paycheck protection program (PPP) loan received by the employer.
11. During the week of 4/12/2020 to approximately 4/25/2020, the claimant worked 4.9 hours for the employer cleaning and performing other duties while the students were not on the employer's campus. The claimant was paid for the 4.9 hours he worked.
12. On or about 4/23/2020, the claimant told the employer's business manager ([X]) that he was concerned about exposure to the COVID-19 virus because he was the only person able to help his fiancée and his fiancée's family.

13. The claimant applied for a job at a retail store ([Business A]) sometime in the beginning of May, 2020.
14. The claimant applied for the job with [Business A] because the numbers of the local population infected with the COVID-19 virus was [sic] very low and the job with the employer had students coming back to the school from different parts of the country. These students would be coming back on airplanes from areas with high COVID-19 infection rates. The claimant felt that the job with [Business A] was safer regarding exposure to the COVID-19 virus than the job with the employer.
15. The job with [Business A] was for part-time work with approximately the same number of hours per week that he was working for the employer.
16. On or about 5/3/2020, the employer contacted all of its employees regarding returning to work.
17. On or about 5/6/2020, the claimant contacted the employer and told the employer that he had a tentative job offer and probably would not return to work with the employer.
18. On 5/7/2020, the claimant told the employer that he was leaving his job with the employer to work for [Business A]. The claimant told the employer that the job with [Business A] was his dream job.
19. The claimant left his job with the employer on or about 5/7/2020 because he was concerned about exposure to the COVID-19 virus and infecting his fiancée and his fiancée's mother; he had another job that provided less exposure to the COVID-19 virus than his job with the employer and because it was his dream job.
20. The claimant did not request a leave of absence from the employer before leaving his employment.
21. The claimant's job at [Business A] initially began in shipping and receiving where he had limited, if any, exposure to the general public. The claimant worked in shipping and receiving from approximately July, 2020, to sometime in August, 2020.
22. As of sometime in August, 2020, the job at [Business A] required the claimant to work with the public. The claimant worked for [Business A] behind a plexiglass screen while helping customers. At that time, [Business A] limited the number of people it allowed in the store to ten people and this included the staff. [Business A] only allowed 4 customers in the store at any given point.

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. 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is eligible for benefits following his separation from the employer.

Because the claimant resigned from his job with the employer, his eligibility for benefits from that point forward 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.

The express language of these statutory provisions places the burden of proof upon the claimant.

Consolidated Finding # 19 sets forth two reasons why the claimant resigned from his part-time position with the employer. He was concerned about exposure to COVID-19 and potentially jeopardizing the health of his fiancée and his fiancée's mother if he continued working at the employer's school, and because he had another job (his dream job), that provided less exposure to the virus. We note that this new job was also a part-time job. *See* Consolidated Finding # 15.

There is nothing in the record which indicates that the employer did, or failed to do, something to cause the claimant to leave his job. Consequently, we agree that the claimant failed to show that he left for good cause attributable to the employer. There is also no provision under G.L. c. 151A, § 25(e), which awards benefits to claimants who separate in order to accept a new part-time job. Rather, the question is whether he has shown that he left for urgent, compelling, and necessitous reasons.

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 (1992).

In this case, the claimant resigned on May 7, 2020. Consolidated Finding # 19. Therefore, we also consider that, at the time, there were also temporary modifications to the unemployment law brought about by the COVID-19 pandemic.

In March, 2020, Congress enacted the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) which, among other things, permitted states to modify their unemployment

compensation law and policies with respect to work search and good cause on an emergency temporary basis as needed to respond to the spread of the COVID-19 pandemic.¹ The U.S. Department of Labor (DOL) also advised states that they had significant flexibility in determining the type of work that is suitable given an individual's circumstances.² Pursuant to this federal guidance, the DUA stated that, as a matter of policy, a claimant had good cause to refuse suitable work if his own health or safety would be compromised due to an underlying medical condition, or the health or safety of the claimant's immediate family member or another household member was put at unreasonable risk by the conditions of employment.³

We do not question that the claimant's fiancée and her mother had a health condition that may have put them at increased risk of complications were they to be infected with the COVID-19 virus. *See Consolidated Finding # 2.* Nor do we question his concern about causing such exposure or his decision to leave his job with the employer. *See Consolidated Finding # 19.* However, the question before us is whether he is entitled to unemployment benefits.

The DUA's flexible policies do not reach the claimant's circumstances. Nothing indicates that he was personally at risk due to having a medical condition. He did not live with or need to be in close proximity to his fiancée and her mother at the time that he quit. His exposure was limited to once a week, dropping off groceries and visiting with them outside. *See Consolidated Findings ## 3–5.* In our view, these do not constitute pressing circumstances that required him to resign. Instead, it appears that he made a voluntary choice to leave this job for what was both his dream job and one where he felt more comfortable about the level of his exposure to COVID-19. *See Consolidated Findings ## 14, 18, and 19.*

We, therefore, conclude as a matter of law that the claimant left his employment without having good cause attributable to the employer or urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

¹ *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

² *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b).

³ DUA UI Policy and Performance Memorandum (UIPP) 2020.12 (Oct. 8, 2020), p. 2.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning May 10, 2020, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 22, 2022



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

AB/rh