

**The claimant quit her job because she experienced childcare challenges as a result of the COVID-19 pandemic, which is an urgent, compelling, and necessitous reason for separation under § 25(e)(1). However, the claimant did not give the employer an opportunity to address her childcare concerns. Because the employer accommodated previous childcare issues, it would not have been futile for the claimant to make further efforts to preserve. Therefore, she is ineligible for benefits.**

**Board of Review  
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**Issue ID: 0050 3528 53**

### 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 separated from her position with the employer on May 14, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 25, 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 November 18, 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)(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 allow both parties an opportunity to present additional testimony and evidence about the claimant's childcare challenges and efforts to preserve her employment. Both parties attended the remand hearing, which took place over two sessions. 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 separated for urgent, compelling, and necessitous reasons because she experienced childcare challenges amidst the COVID-19 pandemic, and that efforts to preserve her employment were futile, is supported by substantial and credible evidence and is free from error of law, where there is also evidence that, in the weeks prior to quitting, the employer had accommodated the claimant's request to reduce her work schedule.

### 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 part time caregiver for the employer, a social service agency that provided and supported community-based supports for the elderly and sufferers of dementia, from 01/05/2020 until 05/04/2020.
2. The claimant's immediate supervisor was the case coordinator (the CC).
3. At the time of the hearing, the claimant provided daily childcare for her granddaughter (the Granddaughter), who was aged nine (9) years old.
4. In the 2019 summer, the Granddaughter lived with the claimant.
5. During the claimant's employment, the Granddaughter lived with her father (the Father), who had custody of her.
6. The Granddaughter did not live with the claimant during her employment.
7. The claimant dropped her husband off at work and picked the Granddaughter up from the Father's home around 7:45 a.m. and brought her home around 5:30 p.m. or 6:00 p.m., Monday through Friday. On occasion, the Granddaughter slept at the claimant's residence on Friday evening and went home on Saturday morning.
8. The claimant's daughter, the mother of the Granddaughter, was addicted to drugs and the claimant felt she was not able to provide reliable childcare to the Granddaughter.
9. At the time of the hearing, the Father had been in a methadone treatment program for approximately one year.
10. The claimant had not attempted to formally obtain custody of the Granddaughter because she believed the Father would prohibit her from seeing the Granddaughter if she did.
11. During the claimant's employment, she worked with a client (the Client) in a nursing home.
12. The claimant typically worked Monday through Wednesday and Friday, from 2:00 p.m. to 5:00 p.m.; Thursday, from 1:00 p.m. to 5:00 p.m.; and 6.5 hours on Sunday. She picked up additional shifts when available.
13. On 02/09/2020 the claimant called the employer and reported she would be late to work. The claimant did not report work on 02/09/2020. It was unknown why the claimant was going to be late to work and why she did not report to work.

14. On 02/28/2020, the claimant called the employer and stated she would not be reporting to work because she was moving.
15. The claimant did not report to work from 03/01/2020 to 03/14/2020 as she notified the employer of a pre-planned vacation at the time she was hired.
16. Prior to 03/2020, the Granddaughter attended school in person from 8:20 a.m. to 3:15 p.m., Monday through Friday.
17. In 03/2020, the Granddaughter's school closed due to the COVID-19 pandemic. She began attending school remotely, from 8:20 a.m. to 3:15 p.m., Monday through Friday.
18. On 03/17/2020, the claimant reported she would be absent for multiple days because she and her husband were sick.
19. On 03/30/2020, the claimant called out of work stating she threw out her back[.]
20. On 04/01/2020, the claimant called out of work stating she had a sore throat and a headache.
21. On 04/04/2020, the claimant called out of work stating she had symptoms consistent with the COVID-19 virus. The employer advised her to get screened for the COVID-19 virus through her doctor and remain out of work for 14 days. She was paid through the Families First Coronavirus Response Act (FFCRA). The employer asked her for documentation for the COVID-19 test. The claimant did not supply the documentation for an unknown reason.
22. [On] 04/23/2020, the claimant reported that her husband was sick, and she needed to leave early. The claimant worked for one hour.
23. On 04/25/2020, the claimant reported that she had childcare issues on Sundays and requested to no longer work Sundays. Her request was approved.
24. The Granddaughter's paternal grandmother assisted with childcare for the Granddaughter until around 05/2020, when she was diagnosed with cancer. She passed away in 11/2020.
25. After the school closed, it became difficult for the claimant to find childcare for the Granddaughter because daycares closed at the same time.
26. On occasions, the claimant brought the Granddaughter with her to work in the nursing home when she lacked childcare. The claimant did not tell the employer she brought her Granddaughter with her to work.
27. On occasions, the claimant's husband brought the Granddaughter to work with him.

28. On occasions after 03/2020, the claimant brought the Granddaughter to her niece's home for childcare. The claimant's niece was not employed and was the mother of two children, including one autistic child.
29. The claimant did not trust the Granddaughter to be cared for by anyone else because of the COVID-19 pandemic.
30. In early 05/2020, the claimant conversed with the CC by text message and told her she was thinking of quitting her employment because she was having payroll issues. The claimant did not understand her pay because she earned \$16 per hour, \$15 per hour, and \$13 per hour depending on the tasks she was supposed to be completing. The CC attempted to explain to the claimant how the payroll was structured but the claimant remained confused about the structure. The claimant complained that her paycheck was low, and the CC informed her that her paycheck was low because she was no longer working 6.5 hours on Sunday at her request. The claimant did not address any additional employment concerns during this conversation.
31. During the week of 05/10/2020, the claimant was scheduled to work Monday through Friday, from 2:30 p.m. to 5:30 p.m.
32. On 05/12/2020, when the claimant arrived at work with the Client, the Client said that her coworker (the Coworker) told her that the claimant did not want to care for her any longer and she was not going to be working there any longer.
33. The claimant told the Client what the Coworker told her was wrong and she was going to continue to care for her.
34. The claimant was angry and upset that the Coworker told the Client she was not going to care for her any longer. The claimant was angry because she believed the CC told the Coworker she had thought of quitting and that the CC was talking about her behind her back.
35. On 05/13/2020, the claimant sent the CC an email telling her she quit because she was angry that the Coworker told the Client she did not want to work for her anymore and that her manager (the CC) told the Coworker her business. She said she wanted to stay but felt she could no longer do so. She told the CC she could accept her resignation effective immediately or she could complete her schedule that week.
36. In the email, the claimant mentioned someone making a post on social media. The nature of the social media post was unclear in the email.
37. The CC responded to the claimant's email on 05/13/2020 and told her she could work out the week to say goodbye to the Client.

38. The CC sent the claimant a second email on 05/13/2020 stating that she reviewed the social media account the claimant referred to and informed her that she did not find social media posts, apart from one asking if anyone wanted "PCA work in [City A]." The CC asked the claimant to forward her additional information about the social media post to look into it in a professional manner.
39. The CC forwarded her email conversation with the claimant to the PD.
40. On 05/13/2020, the PD sent the claimant an email requesting information about the social media post so that she could address the claimant's concern. She informed the claimant that she accepted the claimant's resignation.
41. The claimant did not forward the CC or the PD additional information about the social media post.
42. It was unknown what the claimant objected to in the social media post.
43. On 05/14/ 2020, the claimant worked her last day.
44. On Friday, 05/15/2020, the claimant sent the CC a text message telling her she would not be completing the week and quit effective immediately.
45. The employer had work available for the claimant with the Client.
46. The employer had work available for the claimant with clients throughout eastern Massachusetts. The shifts available were early morning through early evening.
47. It was unknown why the claimant did not tell the employer she quit because of a lack of childcare.
48. On 08/03/2020, the claimant did not tell the Department of Unemployment Assistant [sic] she quit because of a lack of childcare because she was upset about the 05/12/2020 conversation with the Client.

#### Credibility Assessment:

The PD testified that the claimant quit when [sic] because she was unhappy the Coworker talked about her with the Client and because of a social media post. The PD's testimony was corroborated by the email the claimant sent to the CC on 05/12/2020 in which she stated she quit because she was upset with the unprofessionalism because of what she received [sic] was her supervisor talking about her with the Coworker. Further, the PD's testimony, corroborated by email documentation, indicated that the employer reached out to the claimant to resolve the issue, but she did not respond. The claimant testified that she quit because of lack of childcare for the Granddaughter. However, nowhere in her emailed resignation letter does she refer to the Granddaughter not having childcare. Also,

the claimant testified to other childcare options that she had used during her employment. She also only called out absence [sic] once for lack of childcare, on a Sunday, and then reported that she could no longer work Sundays, which the employer accepted. She failed to request any additional shifts or clients with the employer prior to quitting. Based on the claimant's vague and inconsistent testimony and the PD's consistent testimony over both the original and remand hearings, the totality of the employer's testimony outweighs the claimant's testimony. Therefore, the employer is deemed more credible.

### 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the claimant quit her job, this case is properly analyzed 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 . . . .

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.

Under the foregoing provisions, the claimant has the burden to show that she left employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

In this case, because the claimant seeks benefits from the effective date of her claim, July 26, 2020, through the present, we must also consider 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.<sup>1</sup> The U.S.

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<sup>1</sup> See EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

Department of Labor (DOL) has also advised states that they have significant flexibility in determining the type of work that is suitable given an individual's circumstances.<sup>2</sup> Pursuant to this federal guidance, the DUA has stated that, as a matter of policy, a claimant may have good cause to refuse suitable work if, due to age, another individual requires the claimant's care and no alternative care is available due to COVID-19. DUA UI Policy and Performance Memorandum (UIPP) 2020.12 (Oct. 8, 2020), p. 3. These policies were effective from the beginning of the pandemic emergency on March 8, 2020, through September 4, 2021.<sup>3</sup>

Initially, we conclude that the claimant has not shown that she resigned her job for good cause attributable to the employer. When a claimant contends that the separation was for good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Although the claimant testified that she quit for numerous reasons, including payroll issues, a social media posting that upset her, and a statement from her client that a coworker informed her that the claimant was not going to care for her any longer, the record does not suggest that the employer acted unreasonably towards the claimant at any time. *See Consolidated Findings ## 30, 34, 36, 38 and 40.*

In her original decision, however, the review examiner found that the claimant also quit her job due to a lack of childcare. *See Consolidated Findings ## 25–27, and 29.* The review examiner determined that, as a result, the claimant separated 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)(1), 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). Issues related to childcare can certainly constitute a situation which renders a separation involuntary. *See Manias v. Dir. of Division of Employment Security*, 388 Mass. 201, 204 (1983) (child care demands may constitute urgent and compelling circumstances) (citations omitted). As the findings show that the claimant provides daily childcare for her granddaughter and that she faced a number of challenges in obtaining other reliable care, we are inclined to agree with the review examiner’s conclusion. *See Consolidated Findings ## 8, 9, 17 and 28.*

However, to be eligible for benefits, a claimant must also show that she made reasonable efforts to preserve her employment prior to resigning or that such attempts would be futile. *See Norfolk County Retirement System*, 66 Mass. App. Ct. at 766; Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). The review examiner concluded that “[a]lthough the claimant testified she did not request a leave of absence, her reason for doing so is reasonable as she believed she would still not have childcare because schools were closed, the pandemic was still looming and the granddaughter’s parents were unreliable.” The review examiner further concluded that the claimant’s testimony “established further attempts she would have made to preserve her employment would have been futile.” We do not believe the review examiner’s analysis went far enough.

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

<sup>3</sup> *See* UIPP 2021.02, (Jan. 22, 2021), p. 2; and UIPP 2021.07 (Sept. 9, 2021), p. 3.

After remand, the consolidated findings show that, when the claimant resigned in May, 2020, she made no meaningful effort to explain to the employer her childcare concerns prior to separating. *See Consolidated Finding # 47.* As a result, the employer did not have an opportunity to consider and discuss with the claimant any potential means of addressing her childcare through some type of workplace accommodation. There is nothing in the record showing that any attempt to resolve the claimant's childcare concerns would have been futile. To the contrary, the record demonstrates that the employer was willing to work with the claimant to address her concerns. For instance, several weeks prior to quitting, the claimant reported that she had childcare issues on Sundays and requested to no longer work Sundays, and the employer approved her request. *See Consolidated Finding # 23.* In addition, the employer requested information about the social media post that upset the claimant to investigate the matter, but the claimant did not respond to this request. *See Consolidated Findings ## 40 and 41.* Given such employer responses, we do not agree that further attempts to preserve her job would have been futile.

We, therefore, conclude as a matter of law that the claimant is not eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because she failed to make reasonable efforts to preserve her employment.



The review examiner's decision is reversed. The claimant is denied benefits for the week beginning July 26, 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.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 29, 2021**



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 apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**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](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.

JMO/rh