

Claimant reasonably decided to leave his job because his doctor advised that he needed less stressful work due to his medical condition. He requested a reduction in hours, but the employer could not provide him with any job flexibility. Held he separated for urgent, compelling, and necessitous reasons and took reasonable steps to preserve his employment. He is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0051 7664 00

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 reverse.

The claimant separated from his position with the employer and re-opened a claim for unemployment benefits with the DUA, which was approved in a determination issued on October 3, 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 August 4, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that he left employment voluntarily for good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons and, thus, was 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 claimant's appeal, we remanded the case to the review examiner to obtain additional information about the circumstances surrounding the claimant's separation. Only the claimant 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's medical condition did not establish urgent, compelling, and necessitous reasons to resign from his job, 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 full time as a custodian for the employer from June 28, 2020, until the claimant separated on April 14, 2021.

2. The claimant's rate of pay was about \$24.29 per hour.
3. The claimant has been diagnosed with COPD.
4. From August 17, 2020, through April 14, 2021, the claimant was on an approved medical leave of absence from the employer.
5. During his leave of absence, the claimant received pulmonary rehabilitation and breathing treatments.
6. In March or April 2021, the claimant asked his Supervisor whether he could reduce his schedule to two days a week. The Supervisor denied the claimant's request and replied that the claimant's position was full-time.
7. On April 13, 2021, the employer requested further medical notes from the claimant regarding his leave. The claimant indicated that he was seeking a new medical facility.
8. As of April 13, 2021, the claimant was medically restricted from continuing to work in his position due to his medical condition. The claimant's Doctor recommended that he seek other employment that was less stressful than his position as a custodian.
9. The claimant submitted a resignation letter notifying the employer for [sic] his resignation effective for April 14, 2021. The claimant decided to resign because of his doctor's recommendation that he seek other employment.
10. The claimant quit due to illness that prohibited him from performing his work as a custodian.
11. As of August 17, 2021, the claimant was continuing medical treatment for lung disease. The claimant's Doctor recommended that he remains out of work until at least November 12, 2021.

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 failed to show that he separated involuntarily for urgent, compelling, and necessitous reasons.

Because the claimant resigned from his employment, his eligibility for benefits is governed by the provisions of 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 the statute places the burden of proof upon the claimant.

Prior to resigning, the claimant went on a medical leave of absence to receive treatment for his COPD. Consolidated Findings ## 3–5. Subsequently, the claimant resigned from the instant employer after his doctor recommended that he seek alternative, less stressful employment. Consolidated Findings ## 8 and 9. Because nothing in the record suggests that the employer did anything unreasonable to cause the separation, the claimant’s resignation is not due to good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e). See Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980).

Alternatively, we consider whether his separation was due to 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). As the claimant’s doctor advised him to seek other employment due to his underlying health condition, we believe that urgent and compelling personal circumstances existed. See Consolidated Finding # 8.

In order to be eligible for benefits, the claimant must also show that he made a reasonable effort to preserve his employment. “Prominent among the factors that will often figure in the mix when the agency determines whether a claimant’s personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant 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, 597-98 (1974). Here, the findings indicate that the claimant did make a reasonable effort to preserve his employment. The claimant’s full-time job did not meet his medical restrictions, and, when the claimant asked to have his hours reduced to part-time work, he was informed that the employer was unable to accommodate his needs. See Consolidated Finding # 6.

We, therefore, conclude as a matter of law that the claimant left work involuntarily for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning April 11, 2021, and for subsequent weeks if otherwise eligible.

N.B. The original determination issued by the DUA found that the claimant separated from employment on August 17, 2020. As the claimant actually separated from his employment on April 14, 2021, we are asking the agency to investigate the claimant's eligibility for benefits during the period between August 16, 2020, and April 11, 2021.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 5, 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.

LSW/rh