The claimant quit his job, in part, because of childcare and other domestic challenges, but did not give the employer an opportunity to address his concerns. Because the employer accommodated his previous request for time off for childcare and expressed a willingness to work with the claimant to take additional time off, it would not have been futile for the claimant to attempt to preserve his job. Any reason for quitting connected to feeling unable to learn his new job did not create good cause attributable to the employer to resign, because the record shows that the employer's conduct was reasonable. He is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

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Issue ID: 0051 8210 22

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 August 17, 2020. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 11, 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 initial determination and awarded benefits in a decision rendered on June 7, 2021. 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 afford the employer an opportunity to testify. Only the employer 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 left employment for urgent, compelling, and necessitous reasons, because he was unable to handle the stresses of his job and his domestic situation, is supported by substantial and credible evidence and is free from error of law, where the record shows that the claimant did not make the employer aware of his concerns at any time.

Findings of Fact

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

1. On March 25, 2019, the claimant began working as a software developer for the employer, a software development company.

2. When the claimant [sic] hired the claimant, it was looking for a trainee to eventually replace another employee who was getting close to retirement. It sought someone who did not know how to program but who had the aptitude and desire to learn. Based on the interview process, the employer determined that the claimant best met this description from a large number of applicants.

3. The claimant faced a very steep learning curve, but the employer was committed [sic] providing him with the training needed to eventually take over for the retiring employee.

4. The retiring employee was training the claimant one-on-one. There was one other senior employee who also assisted in training the claimant.

5. The claimant found his job tasks extremely challenging. He did not, however, receive any negative performance reviews or disciplinary actions.

6. The Manager of Development was the claimant's direct supervisor. He met with the claimant and either one or both of the trainers once a week to review the claimant's progress. As of August 2020, the claimant had not picked up the material to the point the employer had expected, but the Manager still believed that he could and would learn the material and eventually be able to take over the role of his trainer.

7. The claimant was usually very positive during the weekly meetings about his training. The Manager was unaware that he was not satisfied with the training or unhappy in his position.

8. The claimant's wife gave birth to their first child on March 17, 2020. This was a very traumatic experience as the hospital began closing to visitors, due to COVID-19, while the claimant's wife was in labor. The claimant had to fight with administration to be allowed to be with her.

9. The claimant's wife had a natural birth and lost a lot of blood during the delivery. She continued to be very pale and tired months after the birth. The doctor stated that this was normal, but the claimant remained concerned about her health.

10. The claimant had expected to have help from friends and/or family after the baby was born, but due to COVID-19, this did not happen. The claimant had to care for them himself.

11. When the claimant requested to take time off after the birth of his child, the Human Resources Manager told him he could take two paid weeks off and that it would not be taken out of his accumulated leave time. She also told him that he had a legal right to 12 weeks of unpaid leave if he needed it. In addition, she told him that if he needed more time off, to speak to her and the employer would work something out to provide more paid time. The claimant told her that he did not need more than the two weeks off.

12. Due to the COVID-19 pandemic, the employer changed to a remote work format from around March 17, 2020, through July 5, 2020. After July 5, 2020, the employer had a hybrid format where employees could come to the office to work but were not required to do so.

13. After March 17, 2020, the claimant's manager continued to have the weekly check-in meetings with the claimant and his trainers by phone.

14. The employee training the claimant indicated that he was thinking about retiring at the end of the year [sic]. He did not give an exact date.

15. The claimant did not believe he would be ready to take over for the retiring employee by the end of the year.

16. The Manager knew the claimant was having trouble, but believed he would be able to take over when the need came. However, if the claimant was not ready the Manager planned to hire consultants to help until he was ready.

17. The claimant became overwhelmed with [sic] by the need to care for his family, performing his existing job, and [trying] to prepare for the responsibilities that would come when his trainer retired. He felt under pressure both at home and a [sic] work, he did not have any way to get away from the stressor in his life for any significant period of time.

18. By June 2020, the stress of his life was seriously affecting the claimant's sleep.

19. The claimant's manager was aware that the claimant did not have family around to help with the new baby, but did not realize how much stress this was causing the claimant.

20. The claimant believed that the Manager should be aware, based on the weekly meetings, that he was not ready to take on the responsibilities of the retiring employee and was unlikely to be ready by the end of the year. He also believed that the manager should understand, without being specifically told, that the claimant was also dealing with new and challenging responsibilities at home, given his newborn baby and lack of family support.

21. On Friday, August 14, 2020, the claimant informed the human resources that Monday August 17, 2020, would be his last day. He stated that he had decided

that computer programing was not what he wanted to do and that he was going back to school. He did not mention how the added stress and responsibilities created by the addition of a newborn to his family in the middle of a pandemic crisis with no local family to assist was making it more difficult for him to handle his job responsibilities and learn what he needed to in order to be effective at his job.

22. The Human Resources Manager did not offer any options for preserving his employment, such as transferring to a different position or taking a leave of absence, because the claimant did not indicate that his separation related to stress or other health or family issues and appeared firm in his decision to leave.

23. If the claimant had explained to his manager that he did not feel he would be able to do the job expected of him, the Manager would have worked with him to provide any training and support needed. If the claimant had indicated that he had realized he did not want to be a programmer, the Manager would, given the investment already made in the claimant, have looked into creating a different position in his team for the claimant or finding him a position in the team that did not do programing.

24. The claimant's last day working for the employer was August 17, 2020.

25. On August 18, 2020 [sic] , DUA issued Notice of Disqualification 0051 8120 22-01, stating that under Section 25(e)(1) the claimant was disqualified from receiving benefits for the period starting August 16, 2020, and until he has worked for 8 weeks and earned an amount equal to or in excess of his weekly benefit amount.

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.

Because the claimant quit his job, this case is properly analyzed under 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 he left employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

Initially, we conclude that the claimant has not shown that he resigned his 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). In the original hearing, the claimant testified that he quit because the job was "hard," he was "failing" at it, and that he "had to be 100% by November [2020]" and could not handle the stress.[1] However, on remand, the review examiner found that, while the claimant experienced his job to be extremely challenging, the employer had invested in the claimant and was providing him with one-on-one training, assistance from a senior employee, and weekly trainings in an effort to help the claimant succeed in his eventual role. *See* Consolidated Findings ## 3–6, 13, and 16.

The claimant further testified in the original hearing that he also quit because he had to help his wife care for their newborn child. There is nothing in the record to show that the employer refused or failed to discuss the claimant's childcare needs. Instead, the employer told the claimant that he could take two paid weeks off that would not be taken out of his accumulated leave time; that he had a legal right to take 12 weeks of unpaid leave if needed; and that, if he needed more time off, the employer would work something out to provide the claimant with additional paid time. *See* Consolidated Finding # 11.

Considering the circumstances surrounding his job training and request for time off due to the birth of his child, we do not believe that the employer acted unreasonably towards the claimant at any time. Thus, his resignation is not due to good cause attributable to the employer.

We also consider, as the review examiner did in her original decision, whether the claimant resigned due to urgent, compelling, and necessitous circumstances. This is because the claimant also quit his job due to domestic challenges that arose from the birth of his child, and one of those challenges included childcare. *See* Consolidated Findings ## 10 and 17.

"[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) (childcare demands may constitute urgent and compelling circumstances) (citations omitted). As the findings show that the

[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).

claimant needed to help care for his wife and provide childcare for his infant, and that he was unable to procure other reliable support, we are inclined to agree that these circumstances may have created an urgent, compelling, and necessitous reason to resign. *See* Consolidated Findings ## 9, 10, 17, 20, and 21.

However, to be eligible for benefits, a claimant must also show that he made reasonable efforts to preserve his employment prior to resigning, or that such attempts would have been 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). In her decision, the review examiner concluded that "[i]t is unclear that a leave of absence would have assisted the claimant, given that he was having difficulty with the job even before his child was born and his work responsibilities were about to increase when a more senior employee retired. The claimant was also unaware that a leave of absence was an option to considered." We do not believe the review examiner's analysis went far enough.

When the claimant resigned in August, 2020, he made no effort to explain to the employer his domestic situation and childcare concerns prior to separating. He believed that the employer should know what he was experiencing without being told. *See* Consolidated Findings # 20–22. As a result, the employer did not have an opportunity to consider and discuss with the claimant any potential means of addressing his childcare through some type of workplace accommodation.

There is also 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 his concerns. For instance, after the birth of his child, the claimant requested time off, and the employer approved his request. *See* Consolidated Finding # 11. In addition, the employer informed the claimant about his legal rights and indicated that it would be willing to work with him should he need to take additional time off. Consolidated Finding # 11. Further, nothing in the record indicates that the employer would not have considered granting a leave of absence. *See* Consolidated Finding # 22. Given such employer responses, we do not agree that any attempts to preserve his 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 he failed to make reasonable efforts to preserve his employment before resigning.

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning August 16, 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 - December 30, 2021

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.

JMO/rh