

**Although the claimant’s lack of childcare could be considered an urgent, compelling, and necessitous reason for separation from her job, the claimant did not establish that it was urgent for her to separate when she did, as the family planned to relocate to another state. Nor did she make any effort to attempt to preserve her job. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0051 8467 90**

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 we reverse.

The claimant separated from her position with the employer on August 13, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on November 6, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed in part, and reversed in part the agency’s initial determination and awarded benefits beginning August 9, 2020, in a decision rendered on June 23, 2021. We accepted the employer’s application for review.

Benefits were awarded after the review examiner determined that the claimant left employment involuntarily 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 obtain additional evidence relevant to the claimant’s separation from her employment. Both parties attended the remand hearing. Thereafter, the review examiner issued his 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 from her employment for urgent, compelling, and necessitous reasons because her children were engaged in remote learning due to the COVID-19 pandemic and she had no other childcare options available, 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. On 10/07/19, the claimant began fulltime employment as a non-union Dental Assistant at this employer's dental office.
2. On 03/16/20, the claimant was laid-off due to [COVID]-19 shutdowns.
3. On 05/18/20, when the claimant was recalled to work, the claimant eagerly returned to fulltime work.
4. The claimant wanted to remain working with this employer but after the schools for her three children ages 13, 8 and 6 all went to [COVID]-19 related remote learning, the claimant had no childcare to allow her to work.
5. The claimant's husband works during the day and is unable to provide childcare assistance during the day.
6. On 05/18/20, the claimant's children transitioned to remote learning due to [COVID]-19. After the summer break, the remote learning resumed in September of 2020.
7. At this time, the claimant's mother, who had been assisting the claimant, returned to her home in Ukraine on 08/24/20 for an indefinite period. It was the claimant's mother who watched the children four days per week when claimant [sic] working on Monday, Tuesday, Thursday from 9:00 a.m. to 5:00 p.m. and Wednesday from 9:00 a.m. to 6:00 p.m.
8. The claimant's in-laws, who had been helping occasionally, could not assist when remote learning was implemented as they did not have the computer skills needed and had health concerns as both are over 70 years of age and are high-risk for [COVID]-19. The mother-in-law was hospitalized with heart issues in July of 2020. The father-in-law kept his wife company but could not do childcare on his own.
9. The claimant and her family made the decision to relocate from Massachusetts, where remote learning was being used, to South Carolina where the children's school classes were still being held in person, so the school still provided childcare in South Carolina.
10. The claimant's primary language is Russian.
11. The claimant believes her language issues prevented her from fully conveying her urgent need to leave this position and to seek other evening employment until her family could relocate to South Carolina.
12. The claimant, and others in the office, spoke frequently of the ongoing childcare issues created by remote learning. The childcare issues for the claimant and others created by remote learning were common knowledge in the workplace.

13. The claimant, on 08/03/20, gave her notice that 08/13/20 would be her last day of work. The claimant told the employer Owner that she had to leave work to relocate to South Carolina. The claimant had no issues with this employer and only left employment because of the remote learning childcare issues.
14. The employer had no issues with the claimant and was sad that she had to leave this job as management viewed the claimant as a very good worker.
15. The claimant stayed home during the day to assist her three young children with the remote learning in Massachusetts while the family prepared to possibly relocate to South Carolina once their Massachusetts home sold.
16. The claimant began contemplating a move to South Carolina in mid-August 2020 as her children were due to return to school and her mother was leaving for Ukraine.
17. The claimant made the final decision to move to South Carolina when her Massachusetts home sold on 09/18/20. The claimant paid rent to the new owner of the Massachusetts home until her family relocated out of Massachusetts.
18. The claimant and her children moved to South Carolina on 10/10/20. Her husband joined the family in South Carolina on 11/22/20.
19. In 2020, the claimant's husband was employed in Massachusetts working as a carpenter for [Company A] of [Town A], Massachusetts. This job was due to end in November 2020.
20. The claimant's husband contacted the claimant's uncle, who lives in South Carolina, to assist him with his search for work in South Carolina.
21. On 11/22/20, when the claimant's husband arrived in South Carolina, he did not yet have an offer of work.
22. Because the claimant's husband had no work yet when he moved to South Carolina, the claimant's uncle, who has a construction company, offered to help. On 11/25/20, the claimant's husband was offered work in South Carolina by the claimant's uncle, and he began working immediately.
23. The claimant and her husband owned property in Massachusetts in 2020. The claimant's home in Massachusetts was sold in 2020.
24. The listing contract with a real estate agent was signed on 08/26/20 to sell the Massachusetts property. The claimant closed on the sale of the Massachusetts property on 09/18/20.
25. After relocating to South Carolina, the claimant and her family lived with two different uncles while waiting to move into a new home in South Carolina. The

claimant could not yet enroll her children in public school as she was a guest of her uncle and did not yet have a home of her own in South Carolina. The claimant enrolled her children in private school in South Carolina until she was able to establish residency in South Carolina and was permitted to change her driver's license and other documents to a South Carolina address.

26. On 12/31/20, the claimant purchased new construction housing in North Carolina.

### 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. After such review, the Board adopts the review examiner's consolidated findings of fact as supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant separated from her job with the instant employer for urgent, compelling, and necessitous reasons.

Because the claimant initiated her separation from employment, 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 . . . [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.

As an initial matter, we note that the evidence does not support a conclusion that the claimant quit for good cause attributable to the employer. The review examiner found that the claimant left her job to care for her children while they were engaged in remote learning and in anticipation of relocating to South Carolina. Her decision to leave had nothing to do with her employer. We, therefore, consider whether the reason she could not work constituted urgent, compelling, and necessitous circumstances under the statute.

“[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). Domestic responsibilities, such as the need to provide childcare for minor children, may be sufficient to show such urgent and compelling circumstances as to render a claimant’s separation involuntary. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted).

Consolidated Finding # 11 states that the claimant resigned because she had an urgent need to leave her position with the employer so that she could seek other evening employment until her family could relocate to South Carolina. While looking for a new job may have been the right personal decision for the claimant and her family, it does not constitute an urgent, compelling, and necessitous circumstance as meant under G.L. c. 151A, § 25(e).

The consolidated findings indicate that lack of childcare was the driving factor behind the claimant's decision to leave her job and move the family to South Carolina. But, the claimant stopped working on August 13, 2020. *See* Consolidated Finding # 13. The claimant's mother, her regular child-care provider, did not return to Ukraine until August 24, 2020, two weeks later. *See* Consolidated Finding # 7. Because the claimant could have continued working for at least two more weeks, the need to end her employment on August 13, 2020, was not urgent.<sup>1</sup>

Rather, the record suggests that the claimant decided to leave when her family began making plans to relocate to South Carolina and put their home on the market. *See* Consolidated Findings ## 13, 15, and 16. While resigning may have helped the claimant prepare her home and family for this transition, it is not a compelling reason as meant under G.L. c. 151A, § 25(e).

We also consider that “[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 claimant did not make any efforts to preserve her employment, nor did she show that such efforts would have been futile.

At the time the claimant resigned in August, her home had not been sold, and school had not started. At that time, she could not have known how long her children’s schools would remain operating on a fully remote basis. Moreover, the fact that the claimant enrolled her children in private school in South Carolina begs the question of why they could not have attended an in-person private school in Massachusetts while she continued to work for the employer. *See* Consolidated Finding # 25. If she wanted to keep her job, she could reasonably be expected to have discussed options for flexible hours or a leave of absence. There is no indication from the record that such requests would have been futile, as she was an employee in good standing at the time of her separation. *See* Consolidated Finding # 14.

We, therefore, conclude as a matter of law that the review examiner’s decision to award benefits is not free from error of law, because the claimant did not show that she separated for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e), nor did she take reasonable steps to try to preserve her employment.

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<sup>1</sup> The record also indicates that the impending loss of her husband’s job may have been a factor. But, again, his job was not scheduled to end until November, three months after the claimant resigned. *See* Consolidated Finding # 19.

The review examiner's decision is reversed. The claimant is denied benefits for the week of August 9, 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 - November 22, 2021**



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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](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.

LSW/AB/rh