

**Claimant left her school librarian job for urgent, compelling, and necessitous reasons, because the library carpeting was aggravating her asthma. She is eligible for benefit under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0051 9376 71**

### 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 resigned from her position with the employer on June 22, 2020. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on August 22, 2020. The employer 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 denied benefits in a decision rendered on April 8, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without having good cause attributable to the employer or urgent, compelling, and necessitous reasons, and, thus, she was 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 claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 is disqualified under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the findings of fact show that the claimant left her job because the work environment exacerbated her chronic asthma.

### Findings of Fact

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

1. The claimant worked full-time as a librarian at the employer's high school from 9/3/19 until 6/22/20. The claimant worked from 7:00 a.m. until 3:30 p.m. on Monday through Friday and was paid approximately \$83,000 per year. The claimant's position was represented by a labor union.

2. Due to the COVID-19 pandemic, the employer closed its schools on 3/13/20. During the remaining academic year, which ended on 6/22/20, the claimant worked from home.
3. The claimant has a medical diagnosis of asthma. During the period of 9/3/19 and [sic] 3/13/20, the claimant missed work on one or two days in order to attend medical appointments. The claimant did not take any days out due to illness.
4. After beginning work in September 2019, the claimant found the library to be warm. The claimant's husband brought the claimant a fan to make her more comfortable.
5. The claimant informed her supervisor that she has asthma. The claimant informed her supervisor that her asthma issue was being exacerbated and she believed the condition of the carpeting in the library was contributing to this. The claimant observed that the carpeting was very dirty. The claimant used an albuterol inhaler and medication to treat her asthma. The supervisor asked permission to inform the facilities director of the claimant's concerns with the carpeting and her belief that this was contributing to exacerbation of her asthma. The facilities director subsequently spoke with the claimant and informed her that the carpeting in the library would not be replaced but would be cleaned during the February school vacation week. The carpeting was cleaned in February and again during the summer months of 2020. The claimant did not inform her supervisor or the facilities director of any concerns with temperature or the air conditioning and ventilation system in the library. The claimant had an office with windows that she could open. The claimant's work area within the library was at the far end of the library from where windows are located.
6. On 10/25/19, the Massachusetts Department of Public Health Bureau of Environmental Health (DPH) conducted an indoor air quality review at the school where the claimant worked. The claimant spoke with the environmental engineer who conducted the study. The DPH conducted a previous review at the school on 12/12/17. The results from the 2017 [sic] indicated that the library had no detectable levels of carbon monoxide; that the presence of carbon dioxide was measured at 623 ppm, with a result of less than 800 preferable and a result of more than 800 ppm "indicative of ventilation problems." The 2019 results showed there was no carbon monoxide detected in the library, and that carbon dioxide was measured at 553 ppm. The temperature in the library on 12/12/17 was 73 degrees. The temperature in the library on 10/25/19 was 71 degrees. The relative humidity in the library on 12/12/17 was 32%; the relative humidity was 41% on 10/25/19. The DPC comfort guidelines for relative humidity range from 40 to 60%. Both the 2017 and 2019 reports indicate that the ventilation system provided air supply and exhaust. Both reports indicated the presence of water damaged ceiling tiles and ceiling. The 2019 report

indicates the presence of “old carpet” and “reported allergy triggers”. The 2019 report contains sections that read in relevant part: “Water-damaged ceiling tiles and plaster walls were observed in many classrooms, offices, and hallways (Picture 1, 3 and 4; Table 1), indicating leaks from the building envelope or plumbing system. The roof of the 1980s building has not undergone any significant repair/replacement since the previous IAQ visit in 2017, so roof leaks account for the majority of stained ceiling tiles. In addition, occupants report active leaks in some areas. Ceiling tiles should be replaced after the leak is found and repaired. In general, ceiling tiles have an open space above them (the ceiling plenum) and tend to dry out quickly, reducing the chance for mold colonization. Ceiling plaster does not contain organic material; therefore, it will not support microbial growth even when frequently moistened. In some cases, dust or paint on the surface of plaster can become mold colonized. If this occurs, plaster can often be cleaned to remove mold.”

7. The DPH report addressed the presence of carpet in the school. The report reads in part: “Carpeting is a material that can become water-damaged and colonized with mold. The BEH/IAQ Program does not recommend the use of carpeting in schools, particularly in ground floor or basement levels, due to the likelihood of it becoming moistened due to spills, tracked in moisture, and condensation. During the previous visits to (school), musty odors were noted in many classrooms with carpeting, and carpeting in the building was mostly found to be beyond its service life and in poor condition. Much of the older carpeting has been removed from the building since the 2017 visit (Table 1). Some old carpeting remains in the building including some that is visibly stained, wrinkled, or threadbare (Table 1), indicating that it was past its service life. The service life of carpeting in schools is approximately 10-11 years (HCRC, 2002). Aging carpet can produce fibers that can be irritating to the respiratory system. In addition, tears or lifting carpet can create tripping hazards. Carpeting should be cleaned annually or semi-annually in soiled high traffic areas as per the recommendations of the Institute of Inspection, Cleaning, and Restoration Certification (HCRC, 2012).”
8. During the period of 3/13/20 and [sic] 6/22/20, the claimant was not ill.
9. Sometime in June, the claimant went to the school library to complete work and retrieve items. The claimant decided at the end of June that she would not return to work at the start of the next school year because she was dissatisfied with the conditions in the library and believed that her health would deteriorate if she continued working there.
10. On 6/30/20, the claimant obtained a letter from her physician that reads in part: “She has moderate persistent asthma and has had poorly controlled asthma related to occupational exposure due to poor ventilation and carpeting. I would not recommend that she return to work unless the carpeting can be removed/replaced and the ventilation repaired/replaced...”

11. On 7/9/20, the claimant notified her supervisor in writing that she was resigning. In her resignation letter, the claimant wrote: “As you know from our previous discussions, I have experienced some serious health complications over the fall and winter with my respiratory health. Specifically, my asthma, which was exacerbated by conditions in the library caused from the carpeting and hot temperatures. I have had issues with asthma my entire life but have never let it stand in my way professionally or personally. My doctors at (medical practice) have told me that the seriousness of this condition is something I must address. Fortunately, over the months where I have worked at home, my respiratory health has improved...”
12. Prior to resigning, the claimant did not request any type of accommodation, such as a transfer or relocation of her workspace, or to continue working remotely during the next academic year. The claimant did not speak with anyone at her union to determine if there were options that would allow her to continue her employment.
13. The claimant was unaware of the employer’s plans for the 2020-2021 school year. The claimant was aware that she was expected to return to work at the start of the school year; however, the employer had not informed the claimant whether the school would hold in person classes or whether learning would be conducted remotely, and she would remain working from home.
14. The claimant filed an initial claim for unemployment insurance benefits, effective 8/16/20.
15. The claimant was hospitalized was [sic] a period of one week, beginning on or about 9/24/20, due to pulmonary aspergillosis, a condition that the claimant is aware was related to exposure to mold.

### 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 findings of fact 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 findings of fact and deems them to be supported by substantial and credible evidence. Further, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant is disqualified under G.L. c. 151A, § 25(e)(1).

Because the claimant voluntarily left her job, her separation is analyzed under G.L. c. 151A, § 25(e)(1), 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. In this case, the claimant left work because her asthma was exacerbated by the conditions in the library. *See* Findings of Fact ## 3, 10, and 11.

To determine whether 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). The findings show that the claimant initially raised her health concerns about the library with her supervisor at some point in the fall of 2019. *See* Finding of Fact # 5. An environmental engineer from the Massachusetts Department of Mental Health conducted an indoor air quality review of the entire school on October 25, 2019. The results of this review revealed that, in the library, there was no carbon monoxide, there were safe levels of carbon dioxide, air temperature, humidity, and an operating ventilation system. The review also indicated allergy triggers in the old carpet and a water-damaged ceiling, with recommendations to find and repair leaks throughout the building. *See* Findings of Fact # 6 and 7. Additionally, the employer's facility director investigated the library, and, although the facilities director declined to replace the carpeting, it was cleaned over the following February and vacation week and would be cleaned again over the summer. *See* Finding of Fact # 5. Given that the claimant does not seem to have been ill during the period September 9, 2019, through March 13, 2020, while working on site in the employer's library, we cannot say that the employer's response to her complaint was unreasonable. *See* Findings of Fact ## 2 and 3. Thus, we agree that her separation was not for good cause attributable to the employer.

However, we do believe that the claimant met her burden to show she left 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), “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). 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, 412 Mass. at 848, 851.

Although the claimant had not been ill between September, 2019, and March, 2020, the record shows that her work environment was potentially hazardous to her health. Specifically, her physician stated, “. . . [she] has moderate persistent asthma and has had poorly controlled asthma related to occupational exposure due to poor ventilation and carpeting. I would not recommend that she return to work unless the carpeting can be removed/replaced and the ventilation repaired/replaced . . . .” Finding of Fact # 10. Given her doctor’s recommendation, we believe

that the claimant acted reasonably based upon pressing health concerns, in leaving her job. *See Carney Hospital v. Dir. of Division of Employment Security*, 382 Mass. 691 (1981) (rescript opinion) (leaving work under a reasonable belief that her skin infection was caused by her work environment was sufficient to support a conclusion that the claimant's separation was involuntary under G.L. c. 151A, § 25(e)(1)). The claimant, therefore, has met her burden to show that she separated from employment for urgent, compelling, and necessitous reasons.

Our inquiry into whether the claimant is entitled to unemployment benefits does not end there, however. The claimant must establish that she took reasonable steps to preserve her employment before leaving, or that such an attempt would have been futile. *Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93–94 (1984).

The record shows that the claimant took reasonable steps to preserve her employment. She spoke to her supervisor about the carpet causing problems with her asthma, and she conversed with the DPH environmental engineer who conducted the October, 2019 air quality review. *See Findings of Fact ## 5 and 6.* Moreover, based upon the facility director's response, she reasonably inferred that, before the next academic year, the employer would take no further steps to remedy the problem than to re-clean the carpeting. *See Finding of Fact # 5.* The claimant explained that she did not request a transfer because she was a high school librarian and she was assigned to the only high school in the district.<sup>1</sup>

It is true that the claimant did not ask to continue working remotely when school resumed in the next academic year. *See Finding of Fact # 12.* However, a claimant is required to show reasonable efforts to preserve her employment — not that she had “no choice to do otherwise.” *Norfolk County Retirement System*, 66 Mass. App. Ct. at 766 (further citation omitted). *See also Fergione v. Dir. of Division of Employment Security*, 396 Mass. 281, 284 (1985) (claimant need not show that she had no choice but to resign, merely that she had an objectively reasonable belief). In this case, we think that she acted reasonably. She did not yet know whether she would be expected to return in person, though she knew it would be at some point. And by resigning at the end of the school year, the employer was given sufficient time to find a replacement for the claimant, who was the sole librarian.

We, therefore, conclude as a matter of law that the claimant has shown that she separated from employment for urgent, compelling, and necessitous reasons. She may not be disqualified under G.L. c. 151A, § 25(e)(1).

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<sup>1</sup> While not explicitly incorporated into the review examiner's findings, this portion of the claimant's testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning July 5, 2020, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 28, 2021**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

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.

MJA/rh