

The claimant's post-partum depression established urgent, compelling, and necessitous reasons for leaving her job. She made reasonable efforts to preserve employment, as she tried taking time off before resigning.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

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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 January 24, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 16, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on July 9, 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. Neither party 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 subject to disqualification under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the review examiner's findings of fact indicate that, although the claimant was suffering from postpartum depression, she took no steps to preserve her employment prior to separating.

Findings of Fact

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

1. The claimant worked as a crew working for the employer, a municipality. The claimant began work for the employer in August 2018. She worked Monday

through Friday from 7 a.m. to 2:30 p.m. and earned \$13.50 per hour. She worked in a cafeteria at an elementary school.

2. In March 2019, the claimant had a baby boy. Her son was diagnosed with two heart defects.
3. The claimant returned to work. While she worked, her son was cared for by her sister and her son's father.
4. In the fall of 2019, the claimant became concerned that something would happen to her son when she was not home. She became anxious. She would cry at work.
5. The claimant was diagnosed with postpartum depression by her physician, who prescribed medication for treatment.
6. The claimant also heard that some of her coworkers were talking about her behind her back.
7. The claimant told her supervisor, the Food Service Manager, about her son and postpartum depression.
8. The claimant also told her supervisor about her coworkers. The Food Services Manager told her she would speak with them.
9. The claimant requested, and the employer approved, two weeks off for the claimant in December 2019 because of her postpartum depression.
10. After she returned to work, the claimant continued to feel depressed at work. She thought she was a burden to her coworkers and supervisors. She felt guilty about this.
11. The claimant decided to leave because of her postpartum depression. She did not request any additional time off.
12. On January 13, 2020, the claimant told the Food Services Manager she was leaving. The Food Services Manager asked her to send her written notice to the Superintendent of Schools. The claimant did so.
13. The claimant last performed work for the employer on January 24, 2020.

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. However, 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 of 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 due to postpartum depression, concerns for her infant son's medical condition, anxiety, and learning that her co-workers were talking about her behind her back. See Findings of Fact ## 2, 4, 5 and 6.

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). In addition to the claimant's health issues, the findings show that, when the claimant became aware that her co-workers were talking about her behind her back, she brought this issue to the attention of her supervisor, and the supervisor told her that those co-workers would be spoken to. Because this was a reasonable employer response, we agree that her separation was not for good cause attributable to the employer.

However, we 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.

In this case, in addition to the problem she experienced with her coworkers, the claimant left work because of her postpartum depression and anxiety, which she had, in large part, because of the diagnosis to her newborn child of having two heart defects. See Findings of Fact ## 2, 4, and 5. The findings further indicate that the claimant's anxiety and depression, along with the fear of her

son's medical condition, continued or possibly escalated to a point where she would cry at work. *See* Finding of Fact # 4. Based on these facts alone, we conclude that the claimant has met her burden to show that she separated 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).

We believe that the findings of fact establish that the claimant took reasonable steps to preserve her employment, and that further attempts would have been futile. Although she ultimately chose not to request a personal leave or FMLA, they show that the claimant first requested, and the employer approved, two weeks off for the claimant in December, 2019, because of her postpartum depression. *See* Finding of Fact # 9.

Upon return to work, the claimant continued to feel depressed and had begun to feel guilty, thinking she had become a burden to her coworkers. *See* Finding of Fact #10. Thus, despite her attempts to remain employed, her particular medical circumstances ultimately overwhelmed her and forced her to separate. It was therefore reasonable for the claimant to separate believing that any further time off would not have helped her condition.

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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending January 24, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 2021



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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