

The claimant quit his job to be available to pick his children up from school in the event his wife left him and failed to pick up the children. Since the need for the claimant to transport his children had not yet arisen, he failed to demonstrate an urgent, compelling, and necessitous reason to resign. Moreover, he left work abruptly without making reasonable efforts to preserve, such as asking his employer whether they could work something out if he had to arrive late or leave early to transport his children.

**Board of Review
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Issue ID: 0057 8211 64

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 and filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 21, 2021. The claimant 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 awarded benefits in a decision rendered on July 6, 2021. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily left employment for urgent, compelling, and necessitous reasons, and, thus, he 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 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 stressors which the claimant's family was experiencing constituted urgent, compelling, and necessitous reasons for the claimant to abruptly leave his job, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant and his family relocated to Massachusetts in September 2020.

2. The claimant is married and has 4 children ages, 21, 18, 16 and 13.
3. When the children were babies, the claimant's wife once left him and took the children. She gave him no notice. He just came home one day to find that she and the children were gone.
4. On January 27, 2020, the claimant began working as a driver for the employer, a trash removal business. The only other driver was the claimant's supervisor who had many other responsibilities within the business. He was a backup driver and could only cover the claimant's responsibilities for short periods of time, given these other responsibilities.
5. The claimant's day began at 7 a.m. and concluded around 2:30 p.m.
6. The claimant's wife transported the children to and from school each day. The children had to be dropped off around 8:15 a.m. and picked up around 2:30 p.m.
7. The claimant and his wife had been experiencing marital stress in the winter of 2020.
8. The claimant's youngest son was having issues with bullying in school. He was being teased in school and harassed online. This situation increased the marital stress.
9. The week of February 28, 2020, the claimant received a call, while at work, from his youngest son's school. He was informed that other students had threatened to physical attack his son after school. The claimant's supervisor was present when the claimant received this call.
10. The claimant became concerned that, given the issues in their marriage and the problems their son was having with bullying, his wife was considering leaving him again. She had family in [City A]. He feared that she might leave him while he was at work, leaving the children stranded at school. He also feared she might take the children with her, in which case he believed they would have to attend a new school and sleep on sofas or on the floor due to a lack of space. He concluded that the only way to assure [sic] that his family survived it[s] current crisis was to make himself more available to it. He also concluded that to assure his children were safe, if his wife did decide to leave, he had to be arranged [sic] his life so that he would be available to pick up them up promptly at the end of the school day, should his wife not do so.
11. The claimant did not see a way for him to continue to work for the employer, while also addressing the needs of his family as of February 2020. The claimant also understood that his supervisor did not have the time to cover his responsibility for more than a short period of time and that there was no one else who could do so. In addition, he knew that given his short period of

employment, he had no legal right to a leave of absence. He concluded that his only reasonable option was to resign from his position immediately.

12. The last day that the claimant worked was February 28, 2020. The claimant texted his supervisor, on or about February 30, 2020 [sic], informing him that he was resigning in order to be present for his family. The supervisor responded by encouraging the claimant to reconsider. He reminded him that providing financial support for his family was also an important responsibility. The claimant remained firm in his decision to resign.
13. The claimant filed an unemployment claim effective March 15, 2020.
14. On January 21, 2021, DUA issued Notice of Disqualification 0057 8211 64-01, stating that, under MGL c. 151A, Section 25(e)(1), the claimant was subject to disqualification for the period starting February 9, 2020, and until he worked for 8 weeks and earned an amount equal to or in excess of his weekly benefit amount. This determination came with a document stating that due to the disqualification, the claimant was overpaid \$17,466, which he would be asked to repay.

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 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 do not agree with the review examiner's legal conclusion that the claimant has presented urgent, compelling, and necessitous reasons for leaving his job.

Because the claimant resigned from his employment, his eligibility for benefits is governed by 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.

These statutory provisions place the burden of proof upon the claimant.

There is nothing in the record to suggest that the employer did anything to cause the claimant to resign. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (to establish good cause attributable to the employer under G.L. c. 151A, § 25(e)(1), the focus is on

the employer's conduct and not on the employee's personal reasons for leaving). Thus, we agree with the review examiner that the claimant is not eligible for benefits for this reason.

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 v. Comm'r of Department of Employment and Training, 412 Mass. 845, 848, 851 (1992). Even if the claimant carries his burden to show that circumstances beyond his control were forcing him to resign, "[p]rominent 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 [his] employment' as would indicate the claimant's 'desire and willingness to continue [his] employment.'" Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2009), quoting Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597-98 (1974).

In this case, the findings show that the claimant was concerned that the bullying which his 13-year-old son was experiencing at school was placing such stress on his marriage that his wife would leave him again. And, if she were to leave, he feared his children might be left stranded at school, or that they would have to change schools and would be sleeping on a sofa or the floor. In order to ensure their safety — should his wife decide to leave and not pick them up at the end of the school day — he decided to resign so he would be more available and able to pick them up himself. See Findings of Fact ## 9 and 10.

No doubt the bullying of his son and the fear of his wife leaving were stressful. However, at the time the claimant resigned, the need to drive his children to and from school had not yet arisen. The claimant was merely anticipating that his wife *might* leave him, and if she did, she *might* not pick his children up from school. Under these circumstances, the claimant has not demonstrated that he needed to leave when he did.

Moreover, he resigned without first talking with his employer to discuss possible arrangements they could work out should he have to suddenly arrive late or leave early to transport his children. Thus, the claimant has also failed to show that he made reasonable efforts to preserve his job before resigning.

We, therefore, conclude as a matter of law that the claimant left work voluntarily without good cause attributable to the employer or urgent, compelling, and necessitous reasons. He is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning March 1, 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.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 27, 2021



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.

AB/rh