

Claimant, who became involuntarily separated after her car broke down and she could not afford repairs or find alternate transportation, established urgent, compelling, and necessitous reasons for leaving work as meant under G.L. c. 151A, § 25(e).

**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**

Issue ID: 0060 2589 73

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. We affirm the review examiner's conclusion that the claimant separated involuntarily for urgent, compelling, and necessitous reasons and is entitled to unemployment benefits as of the date of her separation, if otherwise eligible. However, we modify the effective date of this Issue to the actual date of the claimant's separation (February 12, 2021), and we ask that the DUA investigate and adjudicate the claimant's eligibility for benefits under G.L. c. 151A, § 24(b), as of December 13, 2020.

She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 12, 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 October 16, 2021. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons and, thus, was entitled to benefits pursuant to G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the three-day hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant separated involuntarily for urgent, compelling, and necessitous reasons because she had no viable means of transportation to get to work after her automobile broke down, 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 worked as a part-time care giver for the employer, a home health care agency, between October 16, 2020 and December 16, 2020, when she separated.
2. The claimant's immediate supervisor was the care giver manager (supervisor).
3. The claimant lives in [Town A], Massachusetts.
4. The claimant job duties required that she have a car.
5. The claimant's job required that she travel to her client's homes to provide them with services such as cleaning, laundry, and baths, among other things.
6. On December 1, 2020, the claimant informed the supervisor that she had COVID-19. The claimant remained out of work for fourteen (14) days because of the diagnosis.
7. The claimant was scheduled to work on December 16, 2020.
8. On December 16, 2020, the claimant texted the supervisor and informed her that she could not attend the shift because her car was not starting. The supervisor told the claimant that she would document that the claimant was out for the day.
9. Between December 17, 2020 and December 31, 2020, the claimant went to Florida on a scheduled vacation.
10. On January 2, 2021, the claimant contacted the supervisor and told her she was back from vacation. The supervisor informed the claimant that she needed to get a negative COVID-19 test before she could return to work.
11. On January 7, 2021, the claimant, whose car was in the shop, contacted the supervisor and told her she had a negative test but had no car to return to work.
12. The claimant did not have rental coverage and did not have access to another vehicle. It would cost the claimant at least \$1,500.00 to have the car fixed and she did not have the money to pay for the repairs.
13. The claimant was unable to walk to her client's homes because they were too far away from her home.
14. The claimant, who was earning \$16.00 per hour, could not afford to take rideshare to and from each client's house, because it would have been expensive.
15. The claimant did not have friends or family who could drive her to work on a regular basis.

16. On January 11, 2021 and January 12, 2021, the supervisor contacted the claimant and the claimant told her that she still did not have any car. The claimant also told the supervisor that she would not be able to work on January 13, 2021, because she still had no car.
17. On January 14, 2021, the supervisor sent a message to the claimant asking her when she would be able to come back to work. On January 15, 2021, the claimant informed the supervisor that she still had no car and did not know when she would have her car to be back to work.
18. The claimant and the supervisor spoke again on January 16, 2021, and the claimant told the supervisor that she still had no car.
19. On January 18, 2021, the [sic] asked her neighbor if she could use her car, but the neighbor was not able to lend the claimant her the car.
20. On January 20, 2021, the claimant also asked the supervisor if the employer had any car that she could have used since her car was unavailable. The employer told the claimant that she could do meals on wheels, but she would have to go pick up the car and return it at the end of the day.
21. The meals on wheels car was in [Town B] which was twenty-five (25) or thirty (30) minutes from the claimant. The claimant had no one to take her to [Town B] and she was not aware of the bus route. The claimant would have had to take a taxi to and from [Town B], which would have been expensive and not reimbursable.
22. On January 20, 2021, the claimant told the supervisor that she had paid for the parts for the car, which was still in the shop, but hopefully she would have the car soon.
23. On January 28, 2021, the claimant sent a message to the supervisor informing her that hopefully she would have the car by the January 29, 2021, but if not, she would have to give up her position.
24. The claimant did get her car on January 29, 2021.
25. The claimant did not receive any message from the employer offering an unpaid leave of absence.
26. On February 1, 2021 and February 11, 2021, the employer attempted to contact the claimant, but the claimant did not respond.
27. On February 12, 2021, the employer sent a letter to claimant informing her that she had been discharged effective immediately because they had been trying to

get in contact with her regarding her shifts and she had not responded to calls and messages from their management team.

28. The claimant had been collecting unemployment benefits from the department at the time she stopped working for the instant employer.

29. In March 2021, the claimant purchased a new car.

Ruling of the Board

In accordance with our statutory obligation, we review 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. After such review, the Board adopts the review examiner's findings of fact except for the part of Finding of Fact # 1 that indicated that the claimant separated on December 16, 2020, as it is inconsistent with other findings and evidence.¹ In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

As discussed more fully below, we agree with and affirm the review examiner's legal conclusion that the claimant separated involuntarily for urgent, compelling, and necessitous reasons on February 12, 2021.

The review examiner properly decided this case 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.

Under this section of the statute, the claimant bears the burden to show that she is eligible for unemployment benefits. The record here does not indicate that the claimant left her employment as a result of any action taken by the employer. We, therefore, need not consider whether the claimant had good cause for leaving attributable to the employing unit or its agent under G.L. c. 151A, § 25(e)(1).

Our standard for determining whether a claimant has demonstrated urgent, compelling, and necessitous reasons for leaving work has been set forth by the Massachusetts Supreme Judicial Court. To make such a determination, we examine the circumstances in each case and evaluate "the strength and effect of the compulsive pressure of external and objective forces" on the

¹ The separation date of December 16, 2020, is inconsistent with Finding of Fact # 27 and Exhibit # 1, where the employer deemed her to have voluntarily abandoned [her] position with the company" as of February 12, 2021. It is also inconsistent with Findings of Fact ## 7–26, which generally track the parties' efforts to remain in contact about the claimant's possible return to work while she waited for her car to be fixed.

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 (1991).

The claimant worked as a part-time caregiver for the employer home health care agency. As such, her job duties required that she have a car. Consolidated Findings ## 1 and 4. On December 16, 2020, the claimant called out from work because her car would not start. Consolidated Finding # 8. While the claimant was on vacation in Florida from December 17 through December 31, 2020, she continued to remain in contact with the employer about her lack of transportation through January 28, 2021, when she texted her supervisor that she hoped to have her car by January 29, 2021, “but if not, she would have to give up her position.” Finding of Fact # 23. After the employer was unable to contact the claimant on February 1 or February 11, 2021, it sent her a letter informing her it assumed she had “voluntarily abandoned [her] position with the company” as of February 12, 2021. *See* Findings of Fact ## 26–27 and Exhibit 1.

Loss of transportation has been recognized as an urgent, compelling, and necessitous reason for leaving employment where a claimant demonstrates that no reasonable transportation alternative is available. *See Raytheon Co. v. Dir. of Division of Employment Security*, 364 Mass. 593, 597–98. (1974). In this case, the review examiner credited the claimant’s testimony that, after her vehicle broke down, she took it to a shop but did not have money to pay the \$1,500.00 repair costs; her insurance did not provide rental car coverage; she could not walk to clients’ homes because they were too far away from her home; using rideshare services was too expensive for her; she had no friends or family who could drive her to work on a regular basis; and her neighbor could not lend the claimant her car. Findings of Fact ## 12–16 and 19.² The claimant also asked if the employer had a car available for her to use, but the only such car available was for a “meals on wheels” program that would require her to get to [Town B] from her home in [Town A], which was not feasible given the claimant’s lack of transportation. Findings of Fact ## 20–21. Thus, the record shows there was no reasonable transportation alternative that would have allowed the claimant to continue working as a home caregiver.

Further, where a claimant has shown that circumstances beyond her control have forced her to separate, she must also show that she “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 v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2006), *quoting Raytheon Co.*, 364 Mass. at 597–98. As noted above, the claimant made various attempts to preserve her employment. Under these circumstances, we conclude that she took reasonable steps to preserve her employment.

We, therefore, conclude as a matter of law that the claimant is entitled to benefits pursuant to G.L. c. 151A, § 25(e)(1), because she left work due to urgent, compelling, and necessitous circumstances, as of her separation on February 12, 2021.

However, other evidence in the record suggests that the claimant’s eligibility for benefits prior to her separation on February 12, 2021, requires further investigation under other sections of the law.

² We note that the claimant’s job as a caregiver for a home health agency required her to visit and perform services at various clients’ homes, so she needed transportation throughout her workday, rather than simply a ride to work at the beginning of her day and another ride home from work at the end of her day.

First, the review examiner found the claimant was out of work for 14 days after December 1, 2020, because she had tested positive for COVID-19. Finding of Fact # 6. Second, the claimant was in Florida on vacation from December 17 through December 31, 2020. Finding of Fact # 9. Third, from the claimant's return from vacation on or about January 2, 2021 (Finding of Fact # 10) until an unspecified date in March of 2021 when she allegedly purchased a new car (Finding of Fact # 29), the claimant apparently lacked reliable transportation to get to work. Finally, where the claimant worked for this employer on a part-time basis, it is unknown whether she was ever capable of, available for, and actively seeking *full-time* employment while certifying on this claim. Therefore, we ask the DUA adjudication unit to investigate the claimant's eligibility for benefits under G.L. c. 151A, §§ 24(b), 29(a), 29(b), and 1(r), from November 29, 2020, until whatever specific date in "March of 2021" when the claimant secured new transportation.

The review examiner's decision is affirmed in part. The claimant is entitled to receive benefits for the week ending February 14, 2021, and for subsequent weeks if otherwise eligible.

Where we conclude that the claimant separated for urgent, compelling, and necessitous reasons, benefits charged on this claim after the claimant's separation as of February 14, 2021, may be made to the solvency fund pursuant to G.L. c. 151A, § 14(d)(3), if the employer is a contributory employer.

The Board asks that the DUA adjudication unit investigate the claimant's eligibility for benefits from November 29, 2020, until approximately March of 2021 under G.L. c. 151A, §§ 24(b), 29(a), 29(b), and 1(r).

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 14, 2022



Paul T. Fitzgerald, Esq.
Chairman



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

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.

JPCA/rh