

**Board of Review
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Member
Michael J. Albano
Member**

Issue ID: 0061 1006 62

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 benefits following her separation from employment on March 23, 2020. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On February 10, 2021, the agency initially determined that the claimant was not entitled to unemployment benefits. The claimant appealed and both parties attended the hearing. In a decision rendered on July 1, 2021, the review examiner affirmed the agency determination, concluding that the claimant voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(1). The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision is based on substantial evidence and is free from any error of law affecting substantive rights.

On appeal to the Board, the claimant challenged the review examiner's conclusion that she failed to provide medical evidence showing that her child's doctor had advised her to avoid exposure to the COVID-19 virus. Upon review, the Board has located the doctor's letter, which was mailed by the claimant and uploaded to the UI Online record keeping system on April 16, 2021. The document corroborates the claimant's testimony that she resigned because she was concerned about exposing her child to COVID-19. In the letter, the doctor wrote that he considered the child to be a "potential increased risk of disease burden." Thus, the claimant has established that she had an urgent, compelling, and necessitous reason for quitting her employment under G.L. 151A, § 25(e)(1).

However, G.L. 151A, § 25(e)(1), also requires claimants to take reasonable measures to preserve their employment prior to quitting. See Kowalski v. Dir. of Division of Employment Security, 391 Mass. 1005, 1006 (1984) (rescript opinion) (claimants must show that they made reasonable attempts to correct the workplace issues or that such attempts would be futile) (further citations omitted). The record, including the claimant's own testimony, supports the conclusion that she did not attempt to take any measures to preserve employment or show that such attempts would have been futile.

Specifically, the claimant testified that, despite her COVID-19 concerns, she did not ask the employer about the safety protocols it had in place, disclose her COVID-19 related concerns prior to quitting, or take any other steps to stay employed.¹ Nothing else in the record suggests that those attempts would have been futile.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning March 22, 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 22, 2021



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

JMO/rh

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).