

Where the record shows that the claimant was evicted from her home and stopped working for the employer because she was unable to afford other housing in Massachusetts and had to move to Florida, held her separation was involuntary due to urgent, compelling, and necessitous circumstances. The claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0061 6971 29

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. Benefits were denied on the ground that the claimant voluntarily left her job without showing good cause attributable to the employer or urgent, compelling, and necessitous circumstances pursuant to G.L. c. 151A, § 25(e)(1).

The claimant had filed a claim for unemployment benefits, which was denied in a determination issued by the agency on May 5, 2021. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner modified the agency's initial determination in a decision rendered on July 29, 2021. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On October 18, 2022, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant's obligation to ask for further assignments from the employer, a temporary help firm, pursuant to paragraph nine of G.L. c. 151A, § 25(e). Only the claimant attended the remand hearing.¹ Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's original decision, which concluded that the claimant was ineligible for benefits because she failed to demonstrate urgent, compelling, and necessitous reasons for leaving her job, is supported by substantial and credible evidence and is free from error of law in light of the consolidated findings that now show that the claimant had to leave Massachusetts because she could not secure affordable housing.

After reviewing the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we reverse the review examiner's decision.

Findings of Fact

¹ The employer was invited to participate in the hearing as a witness-only but did not attend.

The review examiner's consolidated findings of fact, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant worked as a certified nursing assistant for the employer, a nursing care agency, from approximately January 10, 2020, until sometime in February 2021. The claimant sometimes worked full time and sometimes worked part-time.
2. The claimant filed for unemployment benefits on January 8, 2021, with an effective date of January 3, 2021, based on other employment in the base period.
3. The employer was an agency that provided temporary work for health care workers.
4. The claimant got her employment assignments from the employer by either calling the recruiter or the recruiter calling her.
5. The claimant's assignments from the employer were short-term and could last one day or up to one week.
6. After the claimant received an assignment from the employer, she would receive a confirmation email.
7. The claimant does not know if she signed paperwork that required her to notify her employer that she was out of work prior to filing for unemployment benefits.
8. The employer had additional assignments for the claimant.
9. The claimant did not accept any additional assignments from the employer because she had no place to live and needed to secure housing.
10. The claimant stopped paying rent on her apartment during the COVID-19 public health emergency.
11. Due to the COVID-19 public health emergency, the claimant was not evicted from her apartment for failing to pay rent. The claimant's overdue rent accumulated during the COVID-19 public health emergency.
12. Sometime in February 2021, the claimant was evicted from her apartment due to her failure to pay rent.
13. The claimant tried to secure housing in Massachusetts, but she was unable to find housing that she could afford.
14. The claimant decided to move to Florida because she determined it would be financially better for her as well as safer for her and her 16-year-old daughter.

In Florida, the claimant had someone that she could move in with to help her and her daughter.

15. The claimant left her job with the employer because she lost her housing and was unable to secure affordable, safe housing in Massachusetts.

16. The claimant moved to Florida in February 2021.

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 consolidated 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 consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, based upon these consolidated findings, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits, as outlined below.

The review examiner's decision concluded that the claimant voluntarily resigned her employment and, therefore, decided her eligibility pursuant to the following provisions under G.L. c. 151A, § 25(e):

[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.

Subsequently, the District Court ordered the case remanded for further evidence to consider the claimant's eligibility pursuant to the following additional provisions under G.L. c. 151A, § 25(e):

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

For the purposes of this paragraph, "temporary help firm" shall mean a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects. "Temporary employee" shall mean an employee assigned to work for the clients of a temporary help firm.

The DUA has also promulgated regulations pertaining to this requirement. They are found at 430 CMR 4.04(8), and state, in relevant part, as follows:

(8) Temporary help Firm Former Employees.

(b) Unless the claimant satisfies the provisions of 430 CMR 4.04(8)(c), the commissioner shall determine that the claimant has voluntarily quit employment if:

1. the claimant was employed by a temporary help firm; and
2. the temporary help firm advised the claimant in writing as provided in 430 CMR 9.04(8)(e) of the need to contact the temporary help firm for reassignment upon completion of an assignment; and
3. the temporary help firm submits information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.

(c) The claimant may avoid the commissioner's determination in 430 CMR 4.04(8)(b) above if the claimant shows that he/she:

1. did request another assignment; or
2. did not receive written notice from the temporary help firm of the obligation to request another assignment; or
3. had good cause, as determined by the commissioner, for failing to request another assignment.

(d) The request for a new assignment must be made by the claimant upon completion of the current assignment and before filing an initial (new or additional) claim for benefits.

(e) Any notice given by the temporary help firm to its temporary employees of the need to request a new assignment upon completion of their current assignment must be in writing and inform the employees of the method and manner for requesting a new assignment, such method and manner to be consistent with the normal method and manner of communication between the temporary employee and the temporary employment firm for which he/she works, and that a failure to request a new assignment may affect their eligibility for unemployment compensation.

After remand, the consolidated findings do show that the claimant was a temporary help firm employee when she worked for the employer. *See* Consolidated Findings ## 1, 3, 4, and 5. However, they are ambiguous as to whether the employer had provided her with the requisite notice of the need to ask for a new assignment before requesting unemployment benefits. *See* Consolidated Finding # 7. This ambiguity does not affect the claimant's eligibility for benefits.

In this case, the employer did not participate in either the original or the remand hearing, and it did not return the DUA fact-finding questionnaire. It has not alleged that the claimant's unemployment was due to her failure to request an assignment before collecting unemployment

benefits. Nor has the claimant alleged that it was the employer's failure to provide a new assignment which caused her unemployment. Her separation had nothing to do with either party's failure to comply with the temporary help firm provisions above.

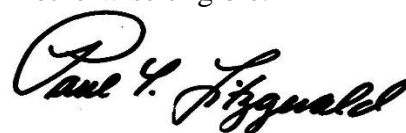
Rather, it was because the claimant lost her housing. During the hearing, the claimant was forthright about why she stopped working for the employer. She explained that she did not stop working because there were no more assignments, but because she had no place to live, and she could not work without a place to live. She had been evicted. *See Consolidated Findings ## 12 and 15.*²

We have held that losing housing may constitute urgent, compelling, and necessitous circumstances for leaving employment, provided the claimant shows that she could not find alternative housing in the area or that she could not afford to stay in the area. Board of Review Decision BR-107914 (Jan. 14, 2009). In this case, the review examiner has found that the claimant tried to secure housing in Massachusetts at the time, but she was unable to find anything that she could afford. Consolidated Finding # 13. In our view, this satisfies the claimant's burden.

We, therefore, conclude as a matter of law that the claimant has demonstrated that she involuntarily separated from the employer due to urgent, compelling, and necessitous reasons, and she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 3, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 27, 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

² 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).

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