

The claimant involuntarily left employment for urgent, compelling, and necessitous reasons, where she experienced severe mental distress over the untimely passing of her partner and could not continue to work. In addition, the claimant made reasonable efforts to preserve by contacting one of her supervisors to request a leave of absence prior to quitting. Therefore, the claimant is eligible for benefits under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0064 7880 97

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 affirm.

The claimant separated from her position with the employer on February 20, 2021. She re-opened an existing claim for unemployment benefits with the DUA, which was denied in a determination issued on May 27, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant and the employer, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on October 26, 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 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 remanded the case to the review examiner to allow both parties to testify and present additional evidence. Both parties attended the remand hearing, which took place over two sessions. Thereafter, the review examiner issued his consolidated findings of fact. 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's mental health challenges established urgent, compelling, and necessitous reasons to resign from her job, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant was employed full-time as a dog groomer for the employer, a mobile dog grooming service, from May 2019 until February 20, 2021.

2. The claimant was supervised by the scheduler (the Scheduler), the owner (the Owner), and the manager (the Manager). The Scheduler was the Owner's daughter.
3. The Manager was in charge of training employees. The claimant did not have regular interaction with the Manager.
4. The Scheduler was in charge of the claimant's day to day activities, including scheduling, ensuring proper attendance, confirming customer services, and supervising daily work.
5. The Owner was in charge of equipment and scheduling trucks to be used by employees.
6. Prior to February 17, 2021, the claimant and her partner had three children.
7. On February 17, 2021, the claimant's partner died. The claimant was mentally distraught.
8. On February 20, 2021, the claimant requested a leave of absence from the Scheduler by phone. The Scheduler told the claimant, "You'll be fine in a couple of days," and avoided the claimant's request. The claimant told the Scheduler she was going to file for Paid Family and Medical Leave (PFML) and needed a leave of absence.
9. On or about February 20, 2021, the claimant quit her job because she could not work in her mental condition.
10. On February 22, 2021, the claimant began an application for PFML through the Department of Family and Medical Leave. The application was submitted to her doctors to be completed.
11. On February 25, 2021, the claimant filed a renewed claim for unemployment benefits for the week ending February 20, 2021.
12. On February 26, 2021, the claimant was prescribed clonazepam, a sedative medication, due to her mental condition. The claimant was not capable of working while taking the medication because it made her drowsy, dizzy, and unable to function. The claimant continued taking the medication until March 5, 2021, when she was prescribed a different medication.
13. The claimant communicated by text with the Scheduler from February 2021 to March 5, 2021, when she told the Scheduler she was entering a six-week program.
14. In February 2021, the Owner texted the claimant with condolences.

15. From March 5, 2021, to April 1, 2021, the claimant attended a day program with a mental health facility. The claimant attended Monday through Friday from 9 a.m. to 2 p.m. The program focused on using different coping skills to relieve depression and anxiety. While the claimant was in the program, her mother watched her children.
16. On March 7, 2021, the Owner texted the claimant that he had received her filing for unemployment and was disappointed with her for quitting.
17. On March 10, 2021, the claimant was prescribed lamotrigine, an anticonvulsant, for 28 days.
18. On March 24, 2021, the claimant texted the Scheduler and the Owner because a coworker had contacted her about locking his keys in a van.
19. On March 24, 2021, the claimant's PFML application was submitted.
20. After April 1, 2021, following the conclusion of the claimant's attendance at the day program, the claimant received house calls from therapists approximately twice per week. She continues to receive twice weekly therapy sessions.
21. On April 6, 2021, the claimant received a denial of her PFML application from the Department of Family and Medical Leave.
22. The claimant maintained social media accounts on Facebook and Instagram.
23. From May 17, 2021, to May 20, 2021, the claimant travelled to Panama City, Florida to attend a funeral. While on the trip, the claimant posted photographs to her social media pages.
24. On May 17, 2021, the Scheduler texted the claimant that she was thinking of her. The claimant responded with details of her personal life. The Scheduler told the claimant she had seen a Facebook post that the claimant was travelling. The claimant said that she was travelling to Florida.
25. On May 20, 2021, the claimant returned to Massachusetts.
26. Around July 2021, the claimant ran into a coworker at a store. The claimant spoke to the coworker about her personal life. The coworker told the Scheduler about the conversation later.
27. On July 13, 2021, the Scheduler texted the claimant about how she was doing. The claimant responded with details of her personal life, including that she was working for a parcel delivery service.

28. Around late July or early August 2021, the Scheduler asked the claimant to return to her job with the employer.

29. On August 9, 2021, the claimant began working for the employer again.

Credibility Assessment:

The claimant testified that the Scheduler was her primary supervisor. The claimant testified that the Scheduler created her schedule, handled conflicts, and gave notes on services. The claimant testified that the Owner handled equipment and did not provide direct supervision to her. The claimant testified that the Manager was not her supervisor. The Owner testified that the Manager was the claimant's primary supervisor. However, the Owner admitted that he did not know how often the Manager and the claimant were in contact. The Owner admitted that the Scheduler was in charge of scheduling and day-to-day supervision of employees. Based on the testimony of both parties, the Scheduler, the Manager, and the Owner shared supervision of the claimant, but the Scheduler was the claimant's primary supervisor for daily activities.

The employer testified that the claimant did not quit her job. However, the Owner admitted that he sent the claimant a text message on March 7, 2021, which stated that he was disappointed in her for quitting. Therefore, the employer's contention that the claimant did not quit is not credible.

The employer testified that the claimant did not request a leave of absence before quitting. However, the Owner admitted that he did not know if the claimant had requested a leave of absence from the Scheduler. The claimant testified that she had requested a leave of absence from the Scheduler on February 20, 2021. The Scheduler sent the claimant a text message requesting her to call on February 20, 2021. Later texts between the Scheduler and the claimant reference whether the claimant was ready to return to work. Given the circumstances of the death of the claimant's partner, it would be reasonable for the claimant to request a leave of absence. The documentary evidence and the claimant's testimony support the conclusion that the claimant did request a leave of absence on February 20, 2021. Neither the claimant nor the Owner could provide testimony as to why the Scheduler failed to grant a leave of absence. The claimant's testimony as to the requesting of the leave of absence is deemed credible.

The Owner testified that the claimant travelled to Florida in March 2021. The Owner based this claim on social media posts provided to him by "a bunch of folks." The Owner admitted that he did not remember the exact date of the posts. The Facebook posts entered into the record do not contain dates. The claimant admitted that she made social media posts and testified that they were made between May 17-20, 2021. The claimant testified that she travelled to Florida for a funeral from May 17-20, 2021. A text message between the claimant and the Scheduler dated May 17, 2021, references seeing a Facebook post and that the claimant was travelling. Additionally, the claimant testified that she was attending

a day program from March 5- April 1, 2021. The claimant referenced entering the day program in a text message with the Scheduler dated March 5, 2021. As the claimant's testimony was based upon firsthand knowledge of her whereabouts and the Owner could not remember the source for his testimony, the claimant's testimony is more credible in this instance.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the record. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the claimant quit her job, we analyze the claimant's separation 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 for such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under the above provision, it is the claimant's burden to establish that she left her job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

Because nothing in the record suggests that the employer did anything unreasonable to cause the separation, the claimant's resignation is not due to good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980).

Alternatively, we consider whether the claimant's separation was due to 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). Medical conditions are recognized as one such reason. *See Dohoney v. Dir. of Division of Employment Security*, 377 Mass. 333, 335-336 (1979).

Here, the findings demonstrate that the claimant experienced severe mental distress over the untimely passing of her partner, and that she quit her job because she could not work in her mental condition. *See Consolidated Findings ## 7, 9, and 12.* Thus, we believe that she separated for reasons that were urgent, compelling, and necessitous.

However, our analysis does not end there. The claimant must also show that she made a reasonable effort to preserve her employment. “Prominent 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 her employment’ as would indicate the claimant’s ‘desire and willingness to continue her employment.’” Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting Raytheon Co. v. Dir. of Division of Employment Security*, 364 Mass. 593, 597–98 (1974).

The findings show that the claimant did make a reasonable effort to preserve her employment. On February 20, 2021, the claimant requested a leave of absence from the Scheduler by telephone. During the conversation, the claimant told the Scheduler that she was going to file for PFML and reiterated that she needed a leave of absence. In response, however, the Scheduler told the claimant, “You’ll be fine in a couple of days,” and avoided discussing the claimant’s request. *See Consolidated Finding # 8.*

We, therefore, conclude as a matter of law that the claimant left work involuntarily for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

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

N.B. The employer will not be charged for any benefits paid under this claim to the claimant, in accordance with G.L. c. 151A, § 14(d)(3). We note that the DUA’s UI Online record-keeping database indicates that the employer has not been charged for the weeks claimed by the claimant, and that benefit payments in the amount of \$5,820.00 have instead been charged to the agency’s solvency fund.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

JMO/rh