

Held claimant had urgent, compelling, and necessitous circumstances causing her to resign from her employment. She needed to be home to supervise her son's remote learning, as he was failing school without adult supervision. She is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0066 3214 13

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. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on December 19, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 17, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on December 4, 2021.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without either good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, was 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 claimant's appeal, we accepted the claimant's application for review and afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. Our decision is based upon a review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant failed to demonstrate that she had good cause attributable to the employer, or urgent, compelling, or necessitous reasons for leaving her employment, is supported by substantial and credible evidence and is free from error of law, where the claimant left work after being contacted by the Department of Children and Families because her 11-year old son was failing his remote learning, and the employer could not accommodate the claimant's hours so she could be home to supervise her children.

Findings of Fact

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

1. The claimant worked full-time as a hair stylist for the employer's salon business from 5/8/18 until 12/19/20. The claimant was paid \$12.75 per hour plus tips.
2. The employer closed its business from 3/17/20 until 5/30/20 due to the COVID-19 pandemic. After reopening, the claimant was scheduled to work a part-time varied schedule of 20 to 25 hours per week.
3. At the time of her separation, the claimant's son was 11 years old, and her daughter was 16 years old. Both children were remote learners because their schools closed. The claimant left the older child to watch over the younger child. The claimant was subsequently contacted by the Department of Children and Families because the son's school reported that he was absent on 20 days and was failing. The claimant found that while she was at work, the son was not doing his work. The claimant requested later shift hours with the employer so that she could be at home to supervise her son's attendance at school from 9:00 a.m. until 3:00 p.m. The employer was able to provide the claimant with some shifts that began at 3:00 p.m. or 4:00 p.m. and ended at 7:00 p.m. The employer could not provide later shifts for the claimant every day because a supervisor needed to work the later shifts in order to close the business at the end of the day.
4. On 12/16/20, the claimant notified the employer that she was resigning on 12/30/20 because of the pandemic and because she needed to help her son with remote learning. The claimant was fearful of coronavirus because her brother passed away and because her work did not allow her to remain six feet away from clients. The claimant did not request a leave of absence because she wanted to be available to work elsewhere. The claimant did not work for any other employer at the time of her resignation.
5. On 12/19/20, the employer informed the claimant that this would be her last day and she did not need to work out the remaining days of her notice period.
6. On 3/30/21, the employer completed a DUA factfinding questionnaire, indicating that the claimant resigned and cited the pandemic and need to help her son with remote learning as the reasons for her resignation. The employer also wrote that the claimant was let go on 12/19/20 because of many issues that day that had to be addressed by the manager, including the claimant yelling.
7. The claimant completed a DUA fact-finding questionnaire, confirming that she resigned her position. In her responses, the claimant wrote that her son was failing in school, the employer sent her to a different store, and she found out someone there had coronavirus and that's when she gave a 2-week notice.
8. On 6/17/21, the DUA issued the claimant a Notice of Disqualification, finding her ineligible for benefits under Section 25(e)(1) of the law for the week beginning 12/13/20 and indefinitely thereafter.

9. On 6/25/21, the claimant appealed the Notice of Disqualification.

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 of fact 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 believe that the review examiner's findings of fact show that the claimant is entitled to benefits.

Since the claimant resigned from employment, her separation is properly analyzed 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 . . . An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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.

Since nothing in the record suggests that the employer caused the claimant to leave her job, we agree with the review examiner's original conclusion that her separation was not for good cause attributable to the employer. However, we believe the claimant has established that she left due to urgent, compelling, and necessitous circumstances.

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. "[A] 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons under" G.L. c. 151A, § 25(e). 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). This may include domestic responsibilities and child-care demands. Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983). The Supreme Judicial Court instructs us to 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, 412 Mass. at 848, 851.

Here, the review examiner found that the employer informed the claimant that she was expected to return to work on May 30, 2021, following the easing of workplace restrictions due to the COVID-19 pandemic. At the time, the claimant did not have childcare for her youngest child, age

11, who was learning remotely due to the closing of the schools. The claimant had her 16-year-old daughter, who was also learning remotely, watch over her younger brother. The claimant was subsequently contacted by the Department of Children and Families because the son's school reported that he was absent on 20 days and was failing. The claimant found that, while she was at work, her son was not doing his work. *See Findings of Fact ## 2–3.*

In light of these circumstances, the claimant reasonably concluded that she could not return to her job with the employer due to urgent, compelling, and necessitous circumstances. Specifically, due to the potential failure of her child's school coursework during the closing of schools caused by the COVID-19 public health emergency, her child-care responsibilities required that she be home to supervise him.

Under Massachusetts law, however, we must also consider whether the claimant made reasonable efforts to preserve her employment before submitting her resignation. Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (1979). Before she separated, the claimant asked her employer to work later shifts to accommodate her childcare demands. While the employer was able to offer some shifts, the employer could not provide for all the claimants' requested hours due to management supervision issues. *See Finding of Fact # 3.*

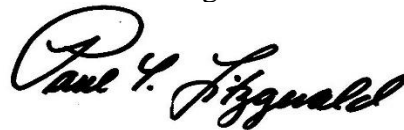
We note that the claimant did not request a leave of absence. *See Finding of Fact # 4.* Given the indefinite nature of the school closures during the pandemic, we decline to penalize her for not pursuing this option.

In light of these findings, we are satisfied that the claimant made reasonable efforts to preserve her job, and that further efforts to preserve would have been futile. *See Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93–94 (1984).

We, therefore, conclude as a matter of law that the claimant may not be disqualified because her separation from employment was due to urgent, compelling, and necessitous circumstances, within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending December 27, 2020, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 25, 2022



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

**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.

MJA/rh