

The employer was under no obligation to rehire the claimant after the claimant submitted a letter of resignation for the purpose of relocating with her spouse. She is ineligible for benefits under G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0066 4543 49

Introduction and Procedural History of this Appeal

The employer 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 resigned from her position with the employer and filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on March 24, 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 approved benefits in a decision rendered on July 13, 2021. We accepted the employer's application for review.

Benefits were approved after the review examiner determined that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons and, thus, was entitled to benefits 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. Our decision is based on our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is entitled to benefits under G.L. c. 151A, § 25(e)(1), is supported by substantial and credible evidence and is free from error of law, where the record before us indicates that the claimant resigned from her employment in order to relocate to Florida, and the resignation occurred prior to the claimant's decision to seek medical treatment.

Findings of Fact

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

1. The claimant worked for the instant employer as a part-time receptionist from January 2021 until her separation on 3/27/2021.

2. On 2/27/2021, the claimant emailed the employer that she was giving her resignation notice with her last date being 3/31/2021.
3. During her resignation notice period, the claimant was notified by her doctor that she would need specialized medical treatment for sorosis of her liver.
4. The claimant wanted to continue seeking treatment through her local medical specialist and decided not to relocate to Florida.
5. The claimant's husband spoke with his employer and they agreed to allow him to remain employed in Massachusetts.
6. On 3/16/2021, the claimant notified the employer that she was not relocating and requested to remain employed at her locations of hire in [Town A] and Methuen.
7. The employer had hired the claimant's replacement and told her that her position was no longer available after her resignation.
8. The employer offered the claimant employment at their [Town B] location which was 30–45-minute commute for the claimant.
9. The claimant lives in [Town C] and her previous commute was 8-10 minutes for either location.
10. The claimant could not work in [Town B] since she would not have childcare to get to work on time and would be late for picking up her child.
11. The claimant declined the [Town B] location, and the employer did not offer any other positions.
12. The employer scheduled the claimant's last shifts on 3/26/2021 & 3/28/2021.
13. The claimant called out sick for her scheduled shift on 3/26/2021.
14. Due to the claimant calling out, the Practice Manager decided that the claimant was not needed for her last shift.
15. On 3/27/2021, the Practice Manager notified the claimant that she was not needed for her last shift scheduled for 3/28/2021.

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 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 reject the review examiner's legal conclusion that the claimant is entitled to benefits under G.L. c. 151A, § 25(e)(1).

Because the claimant quit her employment, we analyze her eligibility for benefits 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. . . .

Notwithstanding the provisions of this subsection, . . . no benefits shall be paid to an individual . . . after having left work to accompany or join one's spouse or another person at a new locality.

Under this section of law, the claimant bears the burden to prove good cause attributable to the employer or urgent, compelling, and necessitous circumstances. Crane v. Comm'r of Department of Employment and Training, 414 Mass. 658, 661 (1993).

In his decision, the review examiner concluded that the claimant ultimately separated from her employment for urgent, compelling and necessitous reasons, namely, the need to seek medical treatment. We disagree. Rather, the record in its entirety establishes that the claimant's resignation, (which was accepted by the employer), was based solely on the claimant's desire to relocate to Florida with her spouse and not by the need to seek specialized medical treatment.

The findings and record establish that the claimant submitted her resignation to the employer via email on February 27, 2021, noting that her last day of work would be March 31, 2021. At the time, she informed the employer that she was resigning in order to relocate with her spouse to Florida. *See Findings of Fact ## 2–6.*¹ The claimant also stated she was providing advance notice of her last working day to afford the employer time to fill the claimant's position. On March 16, 2021, the claimant attempted to rescind her resignation by informing her employer that she was not going to relocate to Florida as originally planned in order to continue medical treatment in Massachusetts. *See Findings of Fact ## 4 and 6.* However, the employer, who had already found a replacement for the claimant's position, declined to rescind the claimant's resignation. Instead,

¹ The claimant also testified that she was resigning because she intended to move to Florida with her husband. While not explicitly incorporated into the review examiner's findings, this testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. *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).

the employer offered the claimant employment at another one of its locations, which the claimant declined. *See* Findings of Fact ## 7 and 8.

Under Massachusetts unemployment law, a voluntary resignation is not affected by the claimant's subsequent change of heart. LeBeau v. Comm'r of Department of Employment and Training, 422 Mass. 533, 536 (1996), *citing* Abramowitz v. Dir. of Division of Employment Security, 390 Mass. 168 (1983). Based upon Abramowitz and LeBeau, the employer was under no obligation to allow the claimant to rescind her February 27, 2021, resignation.

At the time the claimant gave her notice of resignation, it was for the sole purpose of relocating to Florida with her spouse. Under G.L. c. 151A, § 25(e), she is not eligible for benefits. Any subsequent discussions between the claimant and employer after the employer accepted her resignation are not determinative of the claimant's eligibility for benefits. Thus, the findings and the record before us are consistent with a voluntary separation and not involuntary for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e)(1).

The claimant decision to leave her employment in order to relocate to Florida with her spouse was a personal decision on the claimant's part and was not the result of any action or inaction on the part of the employer. Consequently, the claimant's separation was not for any good cause attributable to the employer. *See* Board of Review Decision 0016 3200 42 (September 30, 2015).

We, therefore, conclude as a matter of law that the claimant voluntarily separated from employment to accompany her spouse to a new locality within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning March 27, 2021, and subsequent weeks, until she has eight weeks of work and has earned an amount equal to or in excess of her weekly benefit rate.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 29, 2021



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

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.

MJA/rh