

Claimant is eligible for benefits under G.L. c. 151A, § 25(e), where she quit her temporary job with the instant employer's COVID-19 testing unit in good faith to accept an offer of permanent full-time employment with another employer, but became separated from that job shortly thereafter because she was diagnosed with cancer and her new employer could not hold her job while she underwent treatment.

**Board of Review
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Issue ID: 0067 3510 13

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 resigned from her position with the employer effective February 19, 2021. She subsequently reopened a claim for unemployment benefits with the DUA, which was denied in a determination issued on May 8, 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 awarded benefits in a decision rendered on November 24, 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 for additional evidence concerning the circumstances of the claimant's separation. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact and credibility assessment. 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 quit her job for urgent, compelling, and necessitous reasons when her childcare arrangements changed during the first year of the COVID-19 pandemic, 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. On November 11, 2020, the claimant began working as a medical assistant for the employer, a substance abuse counselling center.
2. The claimant was hired in a temporary position with a COVID-19 testing unit.
3. The employer was located in [City A], where the claimant was required to perform services for the employer.
4. The claimant has an 8-year-old daughter. There are no other members in the claimant's household.
5. The claimant and her daughter lived in [City B], approximately 25-30 minutes north of the employer.
6. The claimant's hours were 8:00 a.m. to 5:00 p.m.
7. The claimant's daughter was enrolled in daycare in [City C], approximately 20–30 minutes north of [City B], and approximately 45 min. – 1 hour north of the employer.
8. The daycare's hours were from 7:30 a.m. until 4:30 p.m.
9. The claimant could not drop her daughter off at daycare in [City C] for 7:30 and commute to the employer in [City A] by 8:00. The claimant could not leave work early enough to pick up her daughter in [City C] by 4:30 p.m.
10. The claimant's parents — who lived in [City C] — would assist with transportation of the claimant's daughter to and from daycare in the morning and evening to accommodate the claimant's work schedule.
11. The claimant's father was previously diagnosed with cancer and at risk to complications from COVID-19.
12. The [sic] was a positive COVID-19 case at the claimant's daughter's daycare.
13. The claimant's parents could no longer assist with transporting the claimant because of the risks of her father being exposed to COVID-19.
14. The claimant required a change to her schedule that would allow her to come in later and leave earlier to accommodate her need to drop off and pick up her daughter from daycare.
15. The claimant approached her supervisor about an accommodation to her hours. The supervisor informed the claimant it would need to hire a replacement for her position to provide coverage if she could not work her scheduled hours.
16. The claimant was not eligible for a leave of absence from the employer.

17. On or around February 8, 2021, the claimant accepted a full-time, permanent position as a laboratory processor with a new employer.
18. The new employer was located in [City B], approximately 3 minutes from the claimant's residence.
19. The claimant's hours with the new employer were 8:00 a.m. to 4:00 p.m.
20. The new employer was approximately 20-30 minutes from the claimant's daughter's daycare. The claimant could drop off her daughter at 7:30 a.m. and still make it to work for the start of her shift. She could also make it back to the daycare by 4:30 p.m. after her shift ended at 4:00 p.m.
21. On February 8, 2021, the claimant informed the employer of her resignation stating it, "worked better with [her] daycare."
22. The claimant gave written notice via email to her employer that she was resigning from her position effective February 19, 2021.
23. The claimant does not recall the specific date she started or ended with the new employer. Only that she left "not long after starting."
24. The claimant was diagnosed with cancer and required treatment. The employer could not hold the claimant's position while she underwent treatment.
25. The claimant began employment with a new healthcare provider as a recovery coach around September of 2021. This employer was located in [City B].
26. On May 8, 2021, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Disqualification effective February 19, 2021.
27. The claimant appealed the determination.

Credibility Assessment:

Neither party provided any additional documents as requested by the Board. Both parties appeared credible. The claimant provided testimony to the best of her recollection and stated if she did not remember specific dates or timeframes. Given that the facts surrounding this issue occurred over a year prior to the remand hearing, the claimant's inability to remember dates does not indicate the rest of her testimony was not credible.

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 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 evidence presented. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant was entitled to benefits.

The review examiner initially awarded benefits pursuant to the following provisions under G.L. c. 151A, § 25(e), which state 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.

Although the review examiner initially concluded that the claimant's childcare situation presented urgent, compelling, and necessitous circumstances around the time of her separation, our decision instead relies upon a different provision within G.L. c. 151A, § 25(e), which states as follows:

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

Under G.L. c. 151A, § 25(e), it is the claimant's burden to establish that she left her job with the instant employer in good faith to accept an offer of permanent, full-time employment with another employer and that she became separated from such new employment for good cause attributable to the new employing unit.

The claimant was hired by the instant employer for a temporary position within its COVID-19 testing unit as a medical assistant. Consolidated Findings ## 1–2. The claimant's drive from her home to her daughter's daycare center took 20 to 30 minutes, and her commute to work from there was an additional 45 minutes to an hour. Consolidated Finding # 7.

On or about February 8, 2021, the claimant accepted a full-time, permanent position as a laboratory processor with a new employer. The new job was located approximately three minutes from the claimant's home, which meant the claimant could reduce her commute time to and from her daughter's daycare center, and her new work schedule was more closely aligned with the hours of her daughter's daycare center. Consolidated Findings ## 8 and 17–20.

On February 8, 2021, the claimant gave notice that she was leaving her employment with the instant employer as of February 19, 2021. Consolidated Findings ## 21–22. The claimant began her new job with her new employer shortly after February 19, 2021. However, the review examiner found that she left "not long after starting" the new job because she had been diagnosed

with cancer and required treatment, and that the new employer could not hold her position for her while she underwent treatment. Consolidated Findings ## 23–24. In our view, the cancer diagnosis presented an urgent, compelling, and necessitous circumstance causing her to separate from her new job.

Although the relevant part of G.L. c. 151A, § 25(e), specifically references separation “for good cause attributable to the new employing unit,” we note that the DUA Adjudication Handbook enunciates a more expansive definition for how to apply this provision of the statute:

Under § 25(e), a claimant is not disqualified if the claimant establishes that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment *under non-disqualifying circumstances*.

See Division of Unemployment Assistance Adjudication Handbook, Ch. 7, § 9 (emphasis added).

The Supreme Judicial Court has previously held that courts will “give deference to the experience, technical competence, and specialized knowledge of the [DUA], as well as the discretionary authority conferred upon [the agency]” in setting requirements to determine a claimant’s eligibility for benefits. *See Grand v. Dir. of Division of Employment Security*, 393 Mass. 477, 481 (1984) (affirming agency’s requirement that claimants maintain a work search log under G.L. c. 151A, § 24(b)) (internal quotations and citations omitted). Consistent with the Supreme Judicial Court’s holding in *Grand*, and for the reasons articulated by the Court therein, this Board defers to the DUA’s interpretation of the relevant provision of G.L. c. 151A, § 25(e).

We, therefore, conclude as a matter of law that, pursuant to G.L. c. 151A, § 25(e), the claimant left her employment in good faith to accept new full-time, permanent work with a different employer, and that she became separated from such new employment for non-disqualifying reasons. In addition, we note that, pursuant to 430 CMR 5.05(4), the employer shall not be charged for the claimant’s benefits.

The review examiner’s decision is affirmed. The claimant is entitled to receive benefits for the week ending February 27, 2021, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 22, 2023



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.

JPCA/rh