

The claimant could not work because schools were closed due to COVID-19 and his children were learning remotely. At some point, his manager told him to return to work, be terminated, or he could resign. The Board held his resignation was due to urgent, compelling, and necessitous circumstances and he is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0067 7969 32

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 resigned from his position with the employer on October 23, 2020. He had previously filed a claim for unemployment benefits with the DUA, effective April 19, 2020, and had been approved. Following this separation, he was again approved for benefits in a determination issued on June 17, 2021. The employer appealed this determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's determination and denied benefits in a decision rendered on December 9, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer, and, thus, he 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 remanded the case to the review examiner to obtain further evidence pertaining the circumstances of the claimant's separation. Both parties attended the remand hearing. Thereafter, the review examiner issued her 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 is supported by substantial and credible evidence and is free from error of law, where the consolidated findings now show that the claimant resigned because he had to stay home with children who were learning remotely and was told to quit or be terminated.

Findings of Fact

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

1. The claimant worked full-time installing satellite equipment and services for the employer's satellite television business from 8/12/19 until 10/16/20 [sic]. The claimant worked a schedule of 40-50 hours per week and was paid \$20.59 per hour.
2. On 10/9/20, the claimant provided the employer written notice that he was resigning his position on 10/23/20. The claimant wrote in relevant part, "As you know, I have recently taken time off due to the current covid 19 pandemic and my struggles with childcare. Unfortunately, now that my children are doing remote schooling, my ability to perform my work duties have (sic) been severely hindered..."
3. Prior to submitting his resignation, the claimant spoke with his supervisor and the Regional Manager about his childcare situation. The claimant worked on days when his wife was able to stay home with the children; the claimant did not work on days when his wife worked. The employer allowed the claimant to work a flexible schedule based on his family's childcare needs. Eventually, the supervisor asked the claimant when he would be able to return to work. The claimant told the supervisor that he was uncertain because of the children's remote learning. Approximately two or three days later, the Regional Manager told the claimant that if he was unable to return to work, his employment would be terminated. The Regional Manager did not discuss any options with the claimant for a leave of absence. The Regional Manager told the claimant that it would be better for him to resign and then return to work when he was able. The claimant was told that he would need to reapply for work through Indeed.com. The claimant eventually applied for work with the employer through Indeed.com but was not contacted or offered work.
4. After filing his initial unemployment claim, the claimant completed a DUA factfinding questionnaire in which he indicated that he was told that his employment would be terminated if he failed to return to work, and that it would be better to resign and reapply at a later date.

Credibility Assessment:

At the initial hearing, attended only by the employer, the employer witness testified that the employer did not terminate employees who were unable to return and that employees who needed additional time off were placed on leaves of absence and allowed to return to work later. During the remand hearing, the employer witness confirmed in his testimony that he did not work for the employer at the time of the claimant's separation and that he had no firsthand knowledge of the Regional Manager or the communication between the claimant and the employer prior to the claimant's separation. Given this, greater weight was given to the claimant's direct testimony that there was no discussion about a leave of absence and he was told that it would be better to resign and that his employment would be terminated if he was unable to return to work.

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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. The employment end date of October 16, 2020, in Consolidated Finding # 1 is incorrect, as it is inconsistent with the record and Consolidated Finding # 2, which shows that the claimant's employment ended on October 23, 2020. In adopting the remaining findings, we deem 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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant resigned from his employment, we analyze his eligibility for benefits pursuant to 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. . . .

The express language of these provisions assigns the burden of proof to the claimant.

In this case, the claimant resigned from his job because schools had closed during the COVID-19 pandemic, his children were learning remotely, and he had to stay home often due to lack of any other childcare. *See* Consolidated Finding # 2. We agree with the review examiner that this reason for leaving was due to his personal circumstances and not for good cause attributable to the employer. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (in determining whether there was good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving).

However, the claimant may still be eligible for benefits if he resigned 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. We must 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 v. Comm'r of Department of Employment and Training*, 412 Mass. 845, 848, 851 (1992). Childcare responsibilities may constitute such circumstances. *See Manias v. Dir. of Division of Employment Security*, 388 Mass. 201, 204 (1983).

The consolidated findings show that the claimant was able to report for work when his wife could care for the children. However, at some point, the Regional Manager indicated that the employer could no longer hold his job under these circumstances. He told the claimant that he had to return to work, or he would be terminated. *See Consolidated Finding # 3.*

During the pandemic, the DUA recognized the extraordinary child-care burden placed upon parents due to school closures brought about by the COVID-19 public health emergency. In a policy memorandum, the DUA described the scenario of a claimant who quit her job because she could not work when she lost her childcare, had no other options during the pandemic, and the employer did not want to hold her position open. The memorandum stated that the claimant was eligible for benefits under G.L. c. 151A, § 25(e)(1), due to urgent, compelling, and necessitous reasons.¹ At the time of the claimant's separation on October 23, 2020, this policy was in effect.² Given the DUA's policy at the time, and the similarity between the claimant's circumstances the scenario described in UIPP 2020.14, we are satisfied that the claimant's resignation in this case was due to urgent, compelling, and necessitous circumstances.

However, our analysis does not stop there. "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 v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2009), *quoting Raytheon Co. v. Dir. of Division of Employment Security*, 364 Mass. 593, 597–98 (1974).

In her credibility assessment, the review examiner discusses the claimant's testimony about how there was no discussion about a leave of absence. Essentially, he was given an ultimatum — quit or be terminated. *See Consolidated Finding # 3.* Given these facts, it is apparent that the claimant had no reasonable options available to maintain his employment, and that any efforts would have been futile.

We, therefore, conclude as a matter of law that the claimant separated from his job due to urgent, compelling, and necessitous circumstances, and he is eligible for benefits under G.L. c. 151A, § 25(e)(1).

¹ DUA UI Policy and Performance Memorandum (UIPP) 2020.14 (Nov. 25, 2020), p. 5.

² *See* UIPP 2021.02 (Jan. 22, 2021).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 18, 2020, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 31, 2023



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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

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