

**The claimant, who lived with her parents, resigned because she was concerned that her accounts payable work would increase her risk of exposing her parents to infection from COVID-19. However, because she did not demonstrate that she or her parents were at increased risk from exposure due to this job, her work was not unsuitable within the meaning of DUA’s temporary modifications made to the definition of suitable work in response to the pandemic. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0067 9998 15**

### 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 affirm.

The claimant separated from her position with the employer on December 29, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 30, 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 October 9, 2021. 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 or urgent, compelling, and necessitous reasons and, thus, was disqualified under G.L. c. 151A, § 25(e)(2). 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 make subsidiary findings relating to the circumstances surrounding the claimant’s separation from work. 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 was not eligible for benefits because she resigned solely out of a generalized fear of COVID-19, 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 worked part-time as an accounts payable assistant for a military uniform company (client), through the employer, a temporary help agency, from October 18, 2020, until December 29, 2020.
2. The claimant's immediate supervisor was the controller for the client.
3. During the claimant's employment, she lived with her parents. The claimant's parents were 72 and 62 years old and had a history of smoking.
4. The claimant's inherent job duties, working in accounts payable, did not put her at an increased risk of exposure to COVID-19.
5. On November 13, 2020, the claimant was tested for COVID-19 following a potential exposure unrelated to her employment. The test was negative for COVID-19.
6. In December 2020, the claimant was tested for COVID-19 following a potential exposure from a coworker. The test was negative for COVID-19.
7. On December 29, 2020, the claimant worked her final day at the client location.
8. The claimant stopped working because she did not want to risk COVID-19 exposure.
9. The claimant did not have underlying health conditions that made her more susceptible to COVID-19 complications.
10. The claimant was not advised by a doctor to not work during the pandemic.
11. The claimant's parents were not advised by a doctor that the claimant should not work during the pandemic.
12. The claimant did not discuss with her parents any conversation which they had with a doctor about her continuing to work during the COVID-19 pandemic.
13. The claimant did discuss with her parents continuing to work due to a concern about contracting COVID-19.
14. In early 2021, the claimant spoke with the client company and requested a leave of absence, but was denied due to her limited tenure. The claimant also requested remote work, but remote work was not available.
15. The claimant did not return to work with the employer. The claimant did not speak with the employer about taking time off or stopping her employment. She only spoke with the client company about those things.
16. In March 2021, the claimant contracted COVID-19.

### Credibility Assessment:

The claimant testified that she was living with her parents at the time she quit her job, that her parents were 72 and 62, and that her parents had a history of smoking. The claimant's testimony to these facts is deemed credible.

The Board's order specifically asked whether it is credible that, after consulting with their doctor, the claimant's parents expressed their concern to the claimant about their potentially increased exposure to COVID-19 due to their age and history of smoking. The claimant testified during the hearing that she did not know if her parents had consulted a doctor about their COVID-19 risks. She had not been at the appointments, and she did not know if her parents had discussed the risks of exposure to COVID-19. Thus, the claimant did not testify that her parents had been advised by a doctor that the claimant's work put them at elevated risk. Given the claimant's lack of knowledge of a conversation between her parents and their doctor, it was not found that the parents consulted with a doctor about the risks of the claimant continuing to work during the pandemic.

The claimant's testimony suggested a belief that her parents would have been at an elevated risk due their age and history of smoking. Because the claimant specifically stated that she did not know if her parents had discussed their risk with a doctor, the basis for this belief was not established beyond mere speculation. Nevertheless, given the claimant's testimony on this subject, it is concluded that the claimant generally discussed the risks of exposure with her parents.

The claimant testified that she was confused about the relationship between her and the employer. She testified that the employer did not know about what was going [sic] with her work status, because she spoke only with the client company about her situation. She testified that she contacted the employer with regard to her test results (because that potentially involved her pay), but, other than that, "to advise that [she] was going to miss work or I had to leave or the whole leave of absence was directly through" the client company. Therefore, a finding of fact was made that the claimant did not speak with the employer about a leave, time off, or quitting.

### 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 evidence presented. As discussed more fully below, we agree the review examiner's legal conclusion that the claimant separated from employment for disqualifying reasons.

Because the claimant initiated her separation from employment, this case 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 . . . [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 statutory provisions places the burden of proof upon the claimant.

As an initial matter, we note that the evidence does not suggest that the claimant resigned due to anything that the employer did. Thus, it does not support a conclusion that the claimant quit for good cause attributable to the employer. The review examiner found that the claimant left her job out of fear of exposure to COVID-19. We, therefore, consider whether the reason she stopped working constituted urgent, compelling, and necessitous circumstances under the statute.

“[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). Additionally, because the claimant separated from her employment on December 29, 2020, we must also consider temporary modifications to the unemployment law brought about by the COVID-19 pandemic.

In March, 2020, Congress enacted the Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) which, among other things, permitted states to modify their unemployment compensation law and policies with respect to work search and good cause on an emergency temporary basis as needed to respond to the spread of the COVID-19 pandemic.<sup>1</sup> The U.S. Department of Labor also advised states that they have significant flexibility in implementing the able, available, and work search requirements, as well as flexibility in determining the type of work that is suitable given an individual’s circumstances.<sup>2</sup>

Pursuant to these changes, the DUA explained that employment may not have been suitable if “it pose[d] a substantial risk to the claimant’s health and safety, or . . . if the claimant’s health or safety would otherwise be compromised due to an underlying medical condition if the claimant accepted employment.” DUA UI Policy and Performance Memo (UIPP) 2020.14 (Nov. 24, 2020), p. 2. The DUA further explained that these temporary policy modifications extended to circumstances where the claimant separated for urgent, compelling, and necessitous reasons. *See* Id., at p. 5.

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<sup>1</sup> *See* EUISAA, Pub. Law 116-127 (Mar. 18, 2020), § 4102(b).

<sup>2</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 10-20 (Mar. 12, 2020), 4(b).

The claimant resigned her position with the employer's client because she was living with her parents, and they were concerned that her work put them at increased risk from exposure to COVID-19. Consolidated Findings ## 13–15. While the claimant's concern for her parents was understandable under the circumstances, she did not present evidence demonstrating that continuing to work at client's office posed an increased risk to the claimant's health or safety. *See* Consolidated Findings ## 9 and 10. As there was no indication from the record that the claimant's work was rendered unsuitable within the meaning of the law, the claimant did not meet her burden to show that she left work for urgent, compelling, and necessitous reasons.

We, therefore, conclude as a matter of law that that the claimant is not entitled to benefits under G.L. c. 151A, § 25(e)(1), because she did not show either good cause attributable to the employer or urgent, compelling, and necessitous reasons for resigning.

The review examiner's decision is affirmed. The claimant is denied benefits for the week of January 10, 2021, and for subsequent weeks until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 17, 2022**

Member Charlene A. Stawicki, 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](http://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.

LSW/rh