

The claimant's transportation concerns were not urgent or compelling enough to render the claimant's resignation involuntary because he was aware of the same transportation problems when he accepted the job and worked the job for several months. While his daughter's increased risk from exposure to COVID-19 may have constituted urgent, compelling, and necessitous reasons for the claimant to resign, he made no effort to inform the employer of his concerns before quitting. As there was no indication the employer would be unresponsive to his requests, the record does not support a conclusion that the claimant took reasonable steps to preserve his employment or otherwise believed such efforts would have been futile. He is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0068 2068 48

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 reverse.

The claimant separated from his position with the employer on February 2, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 10, 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 4, 2022. 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant articulated urgent, compelling, and necessitous reasons for leaving his employment because he did not have adequate transportation to his employer's location and because his daughter was at increased risk from exposure to COVID-19 due to an underlying medical condition, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked as a temporary seasonal employee for the employer, a home improvement retail store, from 11/20/2020 until 02/02/2021.
2. The claimant worked from 5:00 a.m. to 2:00 p.m., Monday to Friday.
3. The employer's department supervisor supervised the claimant.
4. The claimant lived in [Location A] and worked at the employer's store in [Location B].
5. The claimant moved from [Location C] to [Location A] to be closer to his two children, a four[-]year-old and a 5-year-old. The claimant did not have any family or friends in the [Location A] area.
6. At the time the claimant was hired, he did not have a valid driver's license because it was previously revoked, and he was required to pay \$3,000 to reinstate it.
7. The claimant could not afford to reinstate his driver's license.
8. Over the course of his employment, the claimant used ride share services to get to work. He paid approximately \$25-\$30 for fares each way to and from work.
9. The claimant was not aware of the availability of public transportation from his residence to the employer's location.
10. Over the course of the claimant's employment, the claimant arrived at work late while relying on ride share services.
11. In 01/2021, the employer offered the claimant a permanent position. At the time of the offer, the department supervisor told the claimant to get his "attendance under control".
12. In 01/2021 the claimant talked to the department supervisor about his transportation issues. The department supervisor told the claimant to "figure out" a way to get to work.
13. In 01/2021, the claimant participated in a virtual court hearing to discuss visitation with his children, after not seeing them for a year. The claimant struggled after the court hearing, he was not able to concentrate, and he was not able to work.
14. During the COVID-19 pandemic, the employer provided personal protective equipment (PPE), such as masks and hand sanitizer, for the employees and

customers. The employer had posters of the CDC COVID-19 guidelines throughout the store.

15. In 01/2021 the claimant started visitation with his children. The claimant's daughter had a heart condition that placed her at a higher risk for difficulties if she contracted the COVID-19 virus.
16. The claimant was concerned that customers were not following the CDC guidelines inside the store. He became concerned he would contract the COVID-19 virus at work, and he did not want to bring it to his children.
17. As of 02/02/2021, the claimant remained a seasonal employee and was not eligible for another position, transfer, or change of shift.
18. 02/02/2021 was the last day the claimant physically worked with the employer.
19. On or about 02/02/2021, the claimant quit his employment with the employer.
20. The claimant did not request a leave of absence because he did not think of it at the time.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate 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 took reasonable steps to preserve his employment, or otherwise believed further steps would have been futile.

Because work remained available to the claimant as a seasonal employee at the time he initiated his 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 the statute places the burden of proof upon the claimant.

There is no indication from the record that the claimant resigned because of any action taken by the employer. Therefore, the claimant has not shown that he separated for good cause attributable

to the employer, and we consider only whether his separation was due to urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

“[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). In this case, the review examiner identified two issues which she concluded constituted urgent, compelling, and necessitous reasons for the claimant’s resignation.

The first issue identified by the review examiner was the claimant’s transportation issues to and from work. *See* Finding of Fact # 8. While transportation issues may, under certain circumstances, constitute urgent, compelling, and necessitous reasons for a claimant’s resignation, we do not believe such is the case here. In assessing whether a claimant’s reasons for leaving work are urgent, compelling, and necessitous, we must 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). At the time that he was hired, the claimant did not have his license and understood that he would have to rely on alternative forms of transportation to get to work. Findings of Fact ## 6–8. This did not preclude him from accepting the job or working in that position for several months. Findings of Fact ## 1, 6, and 8. Accordingly, the record does not support a conclusion that the claimant’s transportation issues were so compelling as to require the claimant resign from his position.

The review examiner also concluded that the claimant articulated urgent, compelling, and necessitous reasons for resigning, because his daughter had a medical condition that increased her risk from exposure to COVID-19, and the claimant believed that he was at increased risk of exposing his daughter to infection because some customers were not adhering to store rules about usage of PPE. Findings of Fact ## 14–16. Domestic responsibilities, such as the need to provide for the health and safety of a family member, may be sufficient to show such urgent and compelling circumstances as to render a claimant’s separation involuntary. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted). Accepting the claimant’s testimony that his daughter’s underlying health condition substantially increased her risk from exposure to COVID-19, we believe that the claimant may have presented urgent, compelling, and necessitous reasons for resigning.

However, in order to qualify for benefits, a claimant who resigns from employment must also show that he had “taken such ‘reasonable means to preserve his employment’ as would indicate the claimant’s ‘desire and willingness to continue his employment.’” Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–598 (1974). To satisfy the reasonable preservation requirement, a claimant does not have to establish that he had no choice but to resign; he merely needs to show that his actions were reasonable. Norfolk County Retirement System, 66 Mass. App. Ct. at 766.

While the employer provided employees and customers with PPE and required all people in the employer’s location to follow CDC, state, and local guidelines, not all customers adhered to these

rules. Findings of Fact ## 14 and 16. The claimant was understandably concerned about the increased risk posed by the customers who refused to follow these rules. *See* Finding of Fact # 15. However, by his own admission, the claimant never raised his concerns about customer behavior to his supervisor or anyone else at the employer's establishment before resigning.¹ Given the employer's proactive response to the pandemic and its interest in retaining the claimant as an employee, we do not think that it was reasonable for the claimant to quit without giving the employer the opportunity to at least attempt to address his concerns. *See* Findings of Fact ## 11 and 14. Accordingly, we believe that the review examiner erred in concluding that the claimant reasonably believed any efforts to preserve his employment would have been futile.

We, therefore, conclude as a matter of law that the claimant did not meet his burden pursuant to G.L. c. 151A, § 25(e)(1), to show that he took reasonable steps to preserve his employment before quitting.

The review examiner's decision is reversed. The claimant is denied benefits for the week of January 31, 2021, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

[LOCATION C], MASSACHUSETTS
DATE OF DECISION - January 30, 2023



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

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

¹ The claimant's uncontested testimony in this regard 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).

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.

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