

**The claimant had urgent, compelling, and necessitous reasons for leaving where she unexpectedly lost childcare for her daughter who was engaged in remote learning. The employer declined the claimant's request to work remotely or take her daughter to work. As the claimant was not required to request a leave of absence and was unaware whether such a leave was either available or feasible, she took reasonable steps to preserve her employment.**

**Board of Review  
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**Issue ID: 0069 5698 65**

### 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 separated from her position with the employer on May 17, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on October 14, 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 overturned the agency's initial determination and awarded benefits in a decision rendered on March 1, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily 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 to obtain additional evidence about the circumstances surrounding 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, which concluded that the claimant separated from her employment for urgent, compelling, and necessitous reasons because she unexpectedly lost childcare and needed to be home to provide supervision for her 7-year-old daughter who was engaged in remote learning, 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 as a full-time dental receptionist for the employer's dental office, from June 2020 until May 17, 2021, when she separated.
2. The claimant worked Monday through Friday 9:00 a.m.– 5:00 p.m., earning \$23.50 per hour.
3. The claimant's supervisors were the owners of the practice (owners).
4. The claimant's job duties required that she work in-person.
5. As of May 2021, the claimant had two children, an eighteen (18) year old son (son) and a seven (7) year old daughter (daughter). Both children lived with the claimant.
6. The claimant also had a stepdaughter, attending high school, living with her.
7. Prior to the COVID-19 pandemic, the daughter and the stepdaughter were enrolled in full-time school, while the claimant worked.
8. Due to the COVID-19 pandemic, the schools were closed for in-person learning in March 2020 and the daughter and stepdaughter started remote learning at home in March 2020.
9. The son stayed home with the daughter while the claimant worked. The stepdaughter also occasionally watched the daughter.
10. In May 2021, the son told the claimant that he was moving out to live on his own and that he would no longer be available to watch the daughter.
11. When the son moved out in May 2021, the claimant told the owners that she would have to start working part-time because she was having childcare issues.
12. In May 2021, the stepdaughter's classes were hybrid, and she watched the daughter when she was available.
13. The employer allowed the claimant to work part time from 9:00 a.m.-2:00 p.m.
14. In May 2021, shortly after the son moved out, the stepdaughter's school was reopened full-time for in-person classes.
15. The daughter continued to attend classes remotely.
16. The daughter's father was also working full-time and was not available to care for her.
17. The claimant had no one else to provide childcare for the daughter.

18. The claimant's ex-husband was trying to get custody of the claimant's children.
19. On May 17, 2021, the claimant left work at about 1:00 p.m. because she received a call that there were policemen outside her home. The policemen were at the claimant's house to serve her court documents.
20. The claimant, who did not have an adult who could care for the daughter, was scared that the police would show up at her home again and discover that she had no childcare.
21. On May 17, 2021, the claimant contacted the employer and told him that she would not be coming back to work.
22. The claimant had requested to work remotely from home, but the employer had no remote work available.
23. The claimant also asked if she could take her daughter to work with her, but the owners told her no because of the COVID-19 restrictions and regulations that were in place.
24. The claimant was eligible for one (1) month or two (2) months leave of absence. The claimant did not ask for a leave of absence because she was unaware that she was eligible for one. The employer did not offer the claimant a leave of absence.
25. On May 17, 2021, the claimant quit her job because she had to stay home and care for her daughter when no other help was available.

#### Credibility Assessment:

During the remand hearing, the parties gave consistent testimony regarding the claimant's reason for resigning.

During the remand hearing, the employer testified that claimant would have been eligible for a month or two months leave of absence. The claimant credibly testified that she did not know she was eligible for a leave of absence.

#### 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 concur with the review examiner's legal conclusion that the claimant resigned from her employment for urgent, compelling, and necessitous reasons.

Because the claimant resigned her employment, her eligibility for benefits is governed by the provisions of 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, we consider only whether her 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). Domestic responsibilities, such as the need to provide care for 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).

Prior to separating from the instant employer, the claimant was relying on her teenage son and stepdaughter to provide childcare for the claimant’s 7-year-old daughter while she was at work. Consolidated Findings ## 5, 6, 8, and 9. However, the claimant’s son decided to move away, and the claimant’s stepdaughter returned to full-time in-person learning in May, 2021, leaving the claimant’s 7-year-old without supervision while the claimant was at work. Consolidated Findings ## 10–12, and 14. As the claimant was unable to obtain alternative childcare coverage, we conclude that she presented urgent, compelling, and necessitous reasons for resigning. *See* Consolidated Findings ## 16 and 17.

However, our inquiry does not end there. In order to qualify for benefits, a claimant who resigns from employment must also show that she 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, 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 she had no choice but to resign; she merely needs to show that her actions were reasonable. Norfolk County Retirement System, 66 Mass. App. Ct. at 766.

The employer was unable to accommodate the claimant’s request to work remotely or her request to take her daughter to work with her on days she was learning remotely. Consolidated Findings

## 22 and 23. The employer did testify that the claimant was eligible for a one- or two-month leave of absence. Consolidated Finding # 24. However, we do not believe that this fact is determinative, as a claimant is not required to request a leave of absence in order to meet her burden. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). In this case, the claimant was not aware a leave was available, in part because the employer did not offer her such a leave when they were discussing the claimant's childcare issues. Consolidated Finding # 24. Additionally, it is unclear from the record that a one- or two-month leave of absence would be sufficient to address the claimant's childcare issues. Given these circumstances, we conclude that the claimant took reasonable steps to preserve her employment.

We, therefore, conclude as a matter of law that the claimant left work involuntarily for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week of May 16, 2021, and for subsequent weeks, if otherwise eligible.

**N.B.:** The record indicates that the claimant may have limited her availability during the period that she was certifying for benefits. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits under the provisions of G.L. c. 151A, § 24(b).

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - June 27, 2022**



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](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