

Though the claimant may have had an urgent, compelling, and necessitous reason to stop working to care for her ill husband, she failed to make reasonable efforts to preserve her job. She is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0070 9887 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 affirm.

The claimant separated from her position with the employer on June 21, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 20, 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 16, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not leave employment involuntarily for urgent, compelling, and necessitous reasons and, thus, 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 additional evidence about the circumstances surrounding the claimant's separation from employment. Only the claimant attended the remand hearing. 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's need to provide care for her husband did not constitute urgent, compelling, and necessitous reasons for resigning her position with the instant employer, 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 are set forth below in their entirety:

1. The employer is a town. The claimant worked as a part-time speech language pathologist for the employer's school system. The claimant worked for the employer from 2014 to 6/21/2021.

2. The claimant worked nineteen and a half hours per week. The employer then reduced the claimant's hours for the 2020–2021 school year. In the period from 8/31/2020 through 6/21/2021, the employer assigned the claimant to work thirteen hours per week. The employer reduced the claimant's assigned hours due to the COVID-19 pandemic.
3. The claimant attended a meeting with the employer on 8/31/2020. In this meeting, the claimant learned that the employer had reduced her assigned hours to thirteen hours per week.
4. The claimant's husband experienced a stroke on 8/31/2020. The claimant's husband received this diagnosis a week after the event.
5. The claimant worked from home in the 2020–2021 school year. The claimant provided care for her husband while she continued to work.
6. The claimant asked the employer for a leave of absence to care for her husband. The claimant asked for this leave in October 2020. The employer's personnel director informed the claimant that she was not eligible for a leave of absence because she was a part-time worker. The employer's secretary then encouraged the claimant to contact the employer's principal and superintendent. The superintendent called the claimant but the claimant missed the call. The claimant returned the superintendent's call. The superintendent did not return the claimant's call.
7. The claimant continued to work her assigned schedule after the employer denied her leave of absence request. The claimant took days off from work to care for her husband when necessary.
8. In March 2021, the claimant's husband attended physical and occupation therapy. The claimant drove her husband to these appointments.
9. The employer's principal sent an e-mail to the claimant on 3/16/2021 at 3:46 p.m. The e-mail reads:

I hope this email finds you well. It's been a long, crazy year.

I'm wondering if you have made any decisions about next year. We are beginning to make plans and post positions. Please let us know if you want to discuss this in person or over the phone.
10. The claimant responded to the principal's 3/16/2021 e-mail on 3/16/2021 at 4:49 p.m. In her response e-mail, the claimant informed the principal that she had decided to not return for the 2021–2022 school year.

11. The claimant decided to not return to work for the employer for the 2021–2022 school year because she did not know what her husband’s condition would be and because she did not know how the COVID-19 pandemic would continue to unfold.
12. The employer required all of its workers to return to work in-person at its facilities unless they had medical notes that excluded them from in-person work. The employer notified the claimant that this would take effect in April 2021. The claimant submitted a medical note that excluded her from in-person work for the rest of the school year. The employer accepted the note.
13. When the claimant received the 3/16/2021 e-mail from the principal, she did not ask the employer for additional time to decide whether she would return for the 2021–2022 school year. The claimant did not ask for additional time because she felt pressured to make an immediate decision. The claimant felt pressured because the employer had asked for a medical note to work remotely for the remainder of the 2020–2021 school year and she determined that this implied that she had to come back to work in-person for the fall 2021. The claimant did not ask for a leave of absence to decide whether to return for the next year because the employer had previously told her that she was not eligible for a leave of absence. The claimant had requested a leave of absence in October 2020 and the employer told her that she was not eligible for a leave because she was a part-time employee.
14. Prior to her resignation, the claimant did not ask the employer if she could continue to work remotely for the 2021–2022 school year. The claimant did not ask because she concluded that a remote work arrangement was not possible. The claimant concluded that a remote work arrangement was not possible because the employer had ordered all of its workers to return to work at its facilities and her medical note indicated that she should work for home only through the end of the 2020-2021 school year.
15. The claimant continued to work from 3/17/2021 through the end of the school year on 6/21/2021.
16. The claimant had eighty hours of unused sick time when she ceased work or [sic] the employer on 6/21/2021.
17. The claimant did not receive any discipline in the 2020–2021 school year.

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. As discussed more fully

below, we accept the review examiner’s legal conclusion that the claimant is not entitled to benefits.

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 the statute places the burden of proof upon the claimant.

As an initial matter, we note that the evidence 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 in order to provide continuing care for her husband. We, therefore, consider whether the reason she could not work 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). 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).

However, even assuming the claimant has carried her burden to show that circumstance beyond her control led her to resign, she has not established that she took reasonable steps to preserve her employment. *See* Norfolk County Retirement System, 66 Mass. App. Ct. at 766 (noting that a prominent factor to be considered when determining if a claimant separates involuntarily is if the person took reasonable means to preserve her job). *See also* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). Even though the employer’s email actively encouraged its employees to reach out to administrators regarding their plans for the coming academic year, the claimant did not inform the employer of her concerns about returning to in-person learning or request additional time to evaluate whether she felt able to return. Consolidated Findings ## 9, 10 and 13. Further, despite being granted permission to work remotely in the previous academic year, the claimant did not inquire as to whether she could continue to work remotely in the 2021–22 academic year. *See* Consolidated Findings ## 12 and 13.

We, therefore, conclude as a matter of law that the claimant voluntarily left her employment without 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 denied benefits for the week beginning June 20, 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 21, 2022



Charlene A. Stawicki, Esq.
Member



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.

LSW/rh