

**Claimant took reasonable steps to preserve her job prior to quitting, when she requested a change to the day shift to accommodate her childcare needs. It was not necessary for her to request a leave of absence or transfer in order to establish that she made reasonable efforts to preserve. Held she is eligible for benefits under G.L. c. 151A, § 25(e).**

**Board of Review  
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**Issue ID: 0072 2490 98**

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 her position with the employer on August 18, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 29, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on April 26, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that, although the claimant separated for an urgent, compelling, and necessitous reason, she did not take reasonable steps to preserve her employment 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 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not take reasonable steps to preserve her employment prior to quitting, is supported by substantial and credible evidence and is free from error of law, where the findings show that the claimant requested a change to the day shift to try and resolve her childcare needs.

Findings of Fact

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

1. The claimant is the primary caretaker of her daughter (daughter).
2. The claimant is the only adult in her household.

3. In 2021, the daughter was three (3) years old.
4. The claimant worked as a part-time, then later full-time, Public Health Advocate for the employer, a public service health company, between December 12, 2018, and August 18, 2021, when she separated.
5. The claimant's position for the employer was part of a union.
6. The claimant's immediate supervisor was the employer's Clinical Manager.
7. In July, 2020, the claimant switched to full-time work for the employer and was assigned to work the 3:00 p.m. to 11:00 p.m. shift.
8. The daughter [attended] daycare during the day until 4:00 p.m.
9. The claimant's mother (mother) would assist the claimant with childcare while the claimant was working after the daughter got out of daycare.
10. The mother was unable to continue helping the claimant with childcare while the claimant worked due to her arthritis, heart condition and working full-time herself.
11. The claimant asked the Clinical Manager about switching to the day shift, but there was no availability for the claimant to switch her role to the day shift.
12. On August 3, 2021, the claimant gave her notice to the Clinical Manager indicating that August 18, 2021, was going to be her last day.
13. The claimant quit her employment with the employer on August 18, 2021, due to childcare issues.
14. The claimant did not request a transfer.
15. The claimant was eligible for a transfer and the employer had open positions that the claimant was qualified to work.
16. The claimant did not reach out to her union representative for any information about a leave of absence or any other assistance the union could provide.
17. The employer regularly works with union representatives for employees who are having issues.
18. The claimant did not apply for a leave of absence through the employer's human resources department.
19. The employer's Benefit Leave Manager (Benefit Leave Manager) handles all requests for leave of any type for the employer.

20. It was the employer's practice to send all employees directly to the Benefit Leave Manager for inquiries related to a leave of absence of any type.
21. The claimant did not speak to the employer's Benefit Leave Manager about a leave of absence.
22. The claimant would have been eligible for a leave of absence, had she applied for one through the employer.
23. The claimant did not apply for a leave of absence through the employer because she did not believe that she would be paid, based on conversations with coworkers.
24. It was not the employer's practice to refer employees directly to outside vendors regarding leave.
25. The employer's Benefit Leave Manager reviewed the claimant's file prior to the hearing date and found no evidence of the claimant requesting 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 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 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 did not take reasonable steps to preserve her employment prior to quitting.

Because the claimant resigned from her employment, her qualification for benefits is governed by 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.

There is no indication in the record that the claimant resigned from her employment on August 18, 2021, due to good cause attributable to the employer, as the claimant did not contend that she quit due to unreasonable behavior on the employer's part. Thus, the only question that remains is whether she left her position for urgent, compelling, and necessitous reasons, and whether she took reasonable steps to preserve her employment prior to quitting.

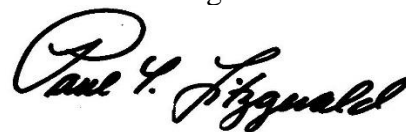
We agree with the review examiner’s original conclusion that the claimant had an urgent and compelling reason to leave her employment, as she separated due to a lack of childcare during her 3:00 p.m. to 11:00 p.m. shift. *See* Findings of Fact ## 7, 10 and 13. Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (childcare demands may constitute urgent and compelling circumstances) (citations omitted). However, we disagree with the review examiner’s conclusion that the claimant did not make reasonable attempts to preserve her employment, as she did not request a leave of absence or a transfer, and she did not request assistance from her union prior to quitting. *See* Findings of Fact ## 14, 16 and 18.

To be eligible for benefits, a claimant who voluntarily leaves her job must show reasonable efforts to preserve her employment, not that she had “no choice to do otherwise.” Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2006) (citation omitted). Further, a claimant is not required to request a transfer to other work or a leave of absence prior to quitting. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). Here, the review examiner found that the claimant requested a change to the day shift, as such a modification to her schedule would resolve her childcare issues by allowing the claimant to be home when her child got out of daycare in the afternoon, but the employer was unable to accommodate her. *See* Findings of Fact ## 7–11. Because the claimant requested an accommodation from the employer to try and resolve her childcare issues, we believe that she took reasonable steps to preserve her employment prior to resigning.

We, therefore, conclude as a matter of law that the claimant quit her employment for urgent, compelling, and necessitous reasons as meant under G.L. c. 151A, § 25(e). We further conclude that she took reasonable steps to preserve her employment.

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning August 15, 2021, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 26, 2022**



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](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.

SVL/rh