

**The claimant had urgent, compelling, and necessitous reasons for leaving when he unexpectedly lost childcare for his three children. The employer declined the claimant's request to adjust his work schedule to accommodate his childcare needs. As the claimant was not required to request a leave of absence and such leave may not have helped, he took reasonable steps to preserve his employment. Held he is eligible for benefits pursuant to G.L. c. 151A, § 25(e).**

**Board of Review  
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**Issue ID: 0073 4312 11**

### 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 his position with the employer on October 6, 2021. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on January 7, 2022. 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 December 31, 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 remanded the case to the review examiner to obtain testimony from the employer's witness, as he was unable to attend the initial hearing due to circumstances beyond his control. Both parties 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 resigned for urgent, compelling, and necessitous reasons because he had lost childcare and was unable to secure any reasonable alternative childcare options for his children, 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 was a full-time driver for the employer, a parcel service, between September 13, 2021, and October 6, 2021, when he separated from his employment.
2. The claimant's direct supervisor was the manager.
3. The claimant's typical schedule was approximately 9:15 a.m. to 7:15 p.m., 5 days a week.
4. The employer did not begin daily operations until approximately 9:15 a.m.
5. At the time of his employment, the claimant had three children, ages 5, 9, and 14.
6. The claimant's wife was enrolled in college classes until approximately 4:15 p.m., and would arrive home at approximately 6:00 p.m.
7. When the claimant's children would return home from school, the claimant's mother-in-law, who was living with him at the time, would watch the children.
8. In approximately October 2021, the claimant's mother-in-law moved to Vermont and could no longer watch the claimant's children when they arrived home from school.
9. On October 6, 2021, the claimant spoke to his supervisor about his childcare issue and requested a change in hours, which included part-time work or a schedule between 7:00 a.m. and 4:30 p.m. The supervisor informed the claimant that the claimant needed to speak to the owner about any shift change.
10. Following the conversation with the supervisor, the claimant spoke to the owner on October 6, 2021, about his scheduling issue, but the claimant was told the company could not accommodate the change in schedule.
11. The claimant did not have other family members or friends who could assist with watching his children when they arrived home from school.
12. The claimant could not afford childcare for when the children arrived home from school as his hourly wage was \$19.50, and the cost outweighed his earnings.
13. The school the claimant's children attended could not enroll the children in an after-school program as it was not accepting part-time program applicants.
14. The claimant was a volunteer football coach, in [sic] which he resigned during the last week of September 2021.
15. On October 6, 2021, the claimant quit his employment due to childcare issues.

16. The claimant did not seek a leave of absence prior to resigning from his employment.
17. The claimant was not at risk of being discharged at the time he quit his employment.
18. The employer had work available for the claimant if he did [sic] quit his employment.
19. The DUA sent a fact-finding questionnaire to the employer asking, "What reason did the claimant give for quitting?", whereby the employer answered, "He didn't". The DUA followed up by asking, "what was your (the employer's) response?", whereby the employer answered, "Tried to get him to stay, because we have plenty of work and hours; claimant refused."
20. The DUA also asked the employer, "Did the claimant give you (the employer) notice in advance that he/she was going to quit?", whereby the employer answered, "No." The DUA followed up by asking, "If no, explain:", whereby the employer answered, "Claimant finished work day [sic] and at the end notified me."

#### Credibility Assessment:

During both the original and remand hearings, the claimant provided credible and consistent testimony that he quit his employment due to childcare issues, notified the employer he would resigning on his last day of employment, and his request for a change in hours of employment was denied. The claimant provided further credible and consistent testimony that he attempted to seek help with childcare but was unable to procure the necessary assistance. During the remand hearing, although the owner asserted that the claimant did not notify the employer that he would be resigning from his employment, and was a no call no show on October 6, 2021, October 7, 2021, and October 8, 2021, this is not credible. The owner's testimony was inconsistent with his written submissions to the DUA, in which he reported that "claimant finished workday and at the end notified me" and "tried to get him to stay, because we have plenty of work and hours, claimant refused." As such, the claimant's testimony and documentation surrounding the claimant's separation of employment is more credible than that of the owner.

#### 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 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 believe the review examiner properly found that the claimant was entitled to benefits.

As the claimant resigned his position with the instant employer, his eligibility for benefits is properly analyzed pursuant to the following provisions under G.L. c. 151A, §§ 25(e), which state, 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.

Under the above provisions, it is the claimant's burden to establish that he left his job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

The claimant testified that he resigned his position with the instant employer because he was unable to secure alternative childcare arrangements. Consolidated Finding # 15. As the claimant did not separate because of any decision made or action taken by employer, we need not consider whether he separated for good cause attributable to the employer pursuant to G.L. c. 151A, § 25(e)(1). *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (to show that the separation was for good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving).

We next consider whether the claimant showed that he separated from his position with the employer for urgent, compelling, and necessitous reasons. “[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 his mother-in-law to provide childcare for his three children while he was at work and his wife was at school. Consolidated Findings ## 5–7. However, the claimant's mother-in-law moved out of state in October, 2021, and was no longer able to provide after school childcare. Consolidated Finding # 8. As the claimant could not work without childcare coverage, we believe that he presented urgent, compelling, and necessitous reasons for resigning. *See Consolidated Findings ## 11–13.*

However, our inquiry does not end there. 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.

The claimant spoke with his supervisor and the employer’s owner about potentially altering his schedule to accommodate his childcare needs but was told that the employer could not accommodate such a change. Consolidated Findings ## 9 and 10. While the claimant did not request a leave of absence prior to resigning, 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 his burden. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984); see Consolidated Finding # 16. In this case, it is not clear that an indefinite unpaid leave of absence would be sufficient to address the claimant’s childcare issues. See Consolidated Finding # 12. Under these circumstances, the claimant took reasonable steps to preserve his 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 October 3, 2021, and for subsequent weeks, if otherwise eligible.

**N.B.:** The record indicates that the claimant may have limited his availability following his separation from the instant employer. 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 - October 24, 2023**



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](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