

Claimant separated due to a lack of childcare for her infant son during the COVID-19 public health emergency. She took reasonable steps to preserve her job prior to quitting by contacting friends, family members, and several day care centers prior to the expiration of her FMLA leave and requesting an extension of that leave, which the employer denied. She is eligible for benefits under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0073 4698 85

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 October 4, 2021. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on January 4, 2022. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 19, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer or 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 allow the claimant an opportunity to testify and afford both parties an opportunity to present additional evidence. 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 failed to demonstrate that she had urgent, compelling, or necessitous reasons for leaving her employment, is supported by substantial and credible evidence and is free from error of law, where the claimant resigned due to a lack of available childcare, and the employer could not accommodate a request to extend her leave of absence.

Findings of Fact

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

1. On March 14, 2016, the claimant started working full-time for the employer, a Long-Term Care Facility, as the Director of Customer Service. The claimant was scheduled to work Monday through Friday from 8:00 a.m. until 4:00 p.m. The claimant was paid \$25.75 per hour. The claimant was hired to work onsite at the employer's facility and did not work remotely.
2. The claimant's supervisor was the Administrator.
3. The claimant's last date of work performing tasks for the employer was on July 9, 2021.
4. After July 9, 2021, the claimant was on an approved maternity leave of absence from the employer's establishment. The claimant's leave of absence was scheduled to end on October 4, 2021, which was 12 weeks. The leave of absence was through the Family Medical Leave Act (FMLA). A portion of the leave of absence was paid.
5. On July 17, 2021, the claimant's child was born.
6. Prior to October 4, 2021, the claimant attempted to find childcare for her infant child.
7. The claimant's husband is the child's father. The claimant's husband was not available to watch the child, as the child's father works full-time during a daytime shift. The claimant's husband was also required to travel in his job position for work. The claimant's husband earned more wages working compared to the claimant's earned wages at the employer's establishment. The claimant's husband also carried the family health benefits through his job position.
8. The claimant did not have any family or friends available to care for the child while the claimant worked. The claimant's parents work full-time and were not available to watch the child. The claimant's mother-in-law often travels and is not available to watch the child.
9. The claimant contacted several daycare establishments to inquire about daycare for her child. The daycare establishments did not have availability for her child due to staff shortages. A daycare facility in [Location A], Rhode Island informed the claimant that the facility could take the claimant's child full-time in the summer of 2022. Another daycare facility informed the claimant that the daycare may have a part-time daycare opening in January 2022 and a full-time opening in March 2022.
10. On Friday, October 1, 2021, the claimant had an in-person meeting with the Administrator at the employer's establishment about the claimant's lack of childcare for her child. The claimant informed the Administrator that the claimant did not have daycare for her child. The claimant informed the

employer that one daycare facility informed the claimant they had possible availability for her child part-time in January 2022 and full-time in March 2022. The claimant informed the Administrator that the claimant was on a waitlist for daycare for her child.

11. During the October 1, 2021, meeting, the claimant requested for [sic] the Administrator to extend the claimant's leave of absence from work. The Administrator denied the claimant's request to extend her leave of absence from work. The employer could not extend the leave of absence for the period of time that the claimant was expecting to have daycare available.
12. The claimant did not return to work for the employer on October 4, 2021, due to having no childcare available for her child.
13. On October 4, 2021, the claimant notified the employer by e-mail that the claimant was resigning. In the e-mail, the claimant wrote: "Please accept this letter as my resignation from my current position, Director of Customer Service. I made this decision to resign, not because I'm unhappy with the company and opportunities you've presented, but as my family obligations have changed significantly. It's been a great pleasure working with you and representing [employer.]"
14. The claimant quit her job at the employer's establishment because the claimant was not available to return to work for the employer following a maternity leave of absence as the claimant had to care for her infant child due to a lack of childcare for the child.
15. The employer did not do anything wrong that caused the claimant to quit.
16. The claimant filed an initial unemployment claim effective the week beginning October 17, 2021.
17. The claimant still does not have childcare available (as of the date of the Remand Hearing Session) and current [sic] has two children.

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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant is disqualified from receiving benefits.

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 nothing in the record to suggest the claimant resigned from her employment on October 4, 2021, for good cause attributable to the employer, as she did not contend that she quit due to any unreasonable behavior on the employer's part. *See Consolidated Finding # 15. See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (when a claimant contends 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). Thus, the only questions that remain are whether she left her position for urgent, compelling, and necessitous reasons, and whether she took reasonable steps to preserve her employment prior to quitting.

Although the employer testified in the initial hearing that the claimant had separated due to a lack of available childcare, the review examiner initially concluded that the claimant had failed to meet her burden to establish a lack of childcare as the reason for her separation, since she had not participated in the hearing. After the remand hearing, however, the review examiner found that the claimant resigned from her position with the employer due to a lack of childcare for her infant son. *See Consolidated Finding # 14.*

“[A] ‘wide variety of personal circumstances’ have been recognized as constituting ‘urgent, compelling and necessitous’ reasons under G.L. c. 151A, § 25(e)(1), 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). Issues related to childcare responsibilities can certainly constitute a situation which renders a separation involuntary. *See Manias v. Dir. of Division of Employment Security*, 388 Mass. 201, 204 (1983) (childcare demands may constitute urgent and compelling circumstances) (citations omitted).

The claimant testified that, as a result of the ongoing unavailability of childcare services brought about by the COVID-19 public health emergency, her childcare responsibilities required that she be home to supervise her infant son.¹ The consolidated findings establish that the claimant’s husband was unavailable to care for their child during the day, as were his parents, and the claimant’s parents. The claimant also had no family or friends available to care for the child while she worked. Consolidated Findings ## 7–8. The consolidated findings also demonstrate that the claimant contacted several day care establishments, and that the earliest availability was a part-time opening in January, 2022. Consolidated Finding # 9. Because the claimant’s FMLA leave was scheduled to expire on October 4, 2021, the claimant would not have access to any childcare

¹ While not explicitly incorporated into the review examiner’s findings, the claimant’s 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).

options for several more weeks, until January, 2022, at the earliest. *See Consolidated Findings ## 4 and 9.* Considering these circumstances, the claimant reasonably concluded that she could not return to her job with the employer. We are satisfied that the claimant had urgent, compelling, and necessitous reasons to leave employment.

However, our analysis does not end here. To be eligible for benefits, a claimant who voluntarily leaves her job must also show that she made reasonable efforts to preserve her employment. Norfolk County Retirement System, 66 Mass. App. Ct. at 766. Here, as noted above, the claimant contacted friends, family members, and various daycare centers to procure suitable childcare prior to the expiration of her FMLA leave on October 4, 2021. Consolidated Findings ## 7–9. In addition, before she separated, the claimant met with her immediate supervisor on October 1, 2021, to explain her childcare challenges and request an extension on her leave of absence. However, the employer was unable to accommodate her. *See Consolidated Findings ## 2, 10–11.* Because the claimant searched for suitable childcare prior to the expiration of her leave and requested an accommodation from the employer to resolve her childcare issues, the record shows that she took reasonable steps to preserve her employment prior to resigning.

We, therefore, conclude as a matter of law that the claimant may not be disqualified, because her separation from employment was due to urgent, compelling, and necessitous circumstances within the meaning of G.L. c. 151A, § 25(e).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning October 3, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 27, 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

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.

JMO/th