

Where the claimant's anxiety and panic disorder made it difficult to perform her duties, she demonstrated urgent, compelling, and necessitous reasons to resign. Given the evidence showing that she was still unable to perform her work after her prior medical leave ended, and her reasonable belief that the employer would not grant her additional leave, she showed that further efforts to preserve her employment would have been futile. The claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0073 5905 87

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 resigned from her position with the employer on November 9, 2021. She filed a claim for unemployment benefits with the DUA, effective October 24, 2021, which was denied in a determination issued on April 4, 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 March 25, 2023. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant left her 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 afford the employer an opportunity to testify and present other evidence. Only the employer 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 left her employment for urgent, compelling, and necessitous reasons in connection with a medical condition of anxiety and panic disorder, 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 employed as a full-time correctional officer for the employer, a jail, from 4/19/2015 until 11/9/2021.
2. As a correctional officer, the claimant oversaw the care, custody and control of incarcerated individuals.
3. The inmate population that the claimant worked with included individuals that committed heinous crimes.
4. On an unknown date in February, 2020, the claimant began experiencing panic attacks due to work related stress and anxiety. The claimant experienced racing heart, sweating, brain fog, panic, and dread.
5. On an unknown date in January, 2021, the claimant's symptoms became severe, and she feared for her life because she had suicidal thoughts.
6. On or about January 5, 2021, the claimant began treatment with a therapist and was diagnosed with anxiety and panic disorders.
7. From 1/5/2021 through 1/30/2021, the claimant was on an approved medical leave of absence and was paid through her accrued time off with the employer.
8. On 1/27/2021, the employer was informed that the claimant required a continuous Family Medical Leave Act (FMLA) leave for "Generated Anxiety Disorder and Panic Disorder." The employer approved the claimant's request for continuous FMLA leave.
9. On 2/8/2021, the claimant applied for an extension in her leave of absence through the State's extended illness leave bank (EILB). The claimant was initially approved for 25 days, from 1/31/2021 through 3/7/2021, under the EILB.
10. The claimant subsequently reapplied and was approved for extensions in her leave of absence through the EILB five (5) times. Each time the claimant applied for an extension through the EILB, she was required to submit medical documentation to support her application.
11. On 3/24/2021, the claimant exhausted her 12 weeks' entitlement through FMLA.
12. On 8/13/2021, the claimant applied for Massachusetts Paid Family Medical Leave (PFML).
13. On 8/14/2021, the claimant exhausted the 120 days in a two (2) year period that she was entitled to through the EILB.

14. On 8/15/2021, the claimant began an unpaid leave of absence with the employer.
15. On 8/18/2021, the claimant's application for PFML was denied because she exhausted all benefits available through the State for the remainder of 2021 when she exhausted the EILB benefits.
16. On 8/19/2021, the claimant informed the Peer Support Coordinator that she filed an appeal to the PFML denial.
17. On 8/27/2021, the employer's Benefits Coordinator (Benefits Coordinator) issued the claimant a letter informing her that she was on an unpaid leave status.
18. On 9/10/2021, the claimant asked the Benefits Coordinator through an email message whether she could take the employer's voluntary physical fitness test (PT test).
19. On 9/21/2021, the Benefits Coordinator emailed the claimant to inform her that the Benefits Coordinator would forward the claimant's request for a PT test to the "appropriate contact" within the employer's human resources department (HR).
20. The claimant emailed the Benefits Coordinator to inform the employer that the claimant had a hearing for her PFML appeal scheduled for the end of September, 2021.
21. On 10/13/2021, the Benefits Coordinator issued the claimant a letter that summarized the claimant's leave of absence since 1/5/2021.
22. The letter stated that the employer was offering the claimant "a temporary unpaid leave of absence until November 10, 2021. This temporary four (4) week period, in combination with your 'sick no pay' status since August 15, 2021, provides you with twelve and a half (12.5) total weeks of excused 'sick no pay' leave while your PFML appeal is pending."
23. The letter further stated, "This offer of accommodation is temporary in duration, as indefinite accommodations may pose an undue hardship on the [employer's] operations. Therefore, you will need to contact me in advance of November 10, 2021, should you require additional leave to reassess both your circumstances and that of the [employer] at that time. Unless your temporary reasonable accommodation can be extended beyond November 10, 2021, you will be required to return to work on November 11, 2021. Please be aware that absent an approved accommodation extension, failure to return to work on November 11, 2021, may result in termination of your employment with the [employer]."
24. On 10/19/2021, the claimant sent the Benefits Coordinator an email message in response to the 10/13/2021, letter. The claimant stated, "I guess I'm confused

because I thought that being written out by my therapist kept me out at an excused absence. Even past the FMLA.” “I’m not mentally ready to come back to work. I don’t think I could properly do my job.” The claimant also stated, “The only reason I was denied [PFML] is because I’ve exhausted [my] benefits for the year. Unfortunately they considered the sick bank in their decision.”

25. On 10/22/2021, the Benefits Coordinator sent the claimant an email message that stated, in part, “[the employer] is not questioning you or the reason for your leave.” The Benefits Coordinator clarified the 10/13/2021, letter and stated, “[the employer] is extending you the offer of a temporary accommodation of an excused, unpaid leave of absence until November 10, 2021, to assist you while your Paid Family Medical Leave (PFML) appeal is pending.”

26. On 10/22/2021, the claimant’s therapist recommended that the claimant remain out of work and did not clear the claimant to return to work.

27. On 10/26/2021, the claimant sent an email message to the Benefits Coordinator that stated:

“I had my meeting with the PFML people and was informed that because of my use of the sick bank I had exhausted all benefits from the state for the remainder of 2021. They said I could reapply January 1, 2022. We canceled my appeal because it’s very black and white and there was nothing essentially to appeal. It is my understanding while reading the previous emails that this temporary accommodation is based on the findings of that meeting.

As I stated previously I do not feel well enough to come back to work. In a professional [sic] as dangerous as the jail can be. I know I would need to be 100% which I am not. After many discussions with my provider, she agrees and would not feel comfortable providing a note releasing me from her care in that matter. For the safety of myself and others I must decline the offer of temporary accommodation offered by the [employer]. Unfortunately I cannot put a date on my wellness or recovery.

That being said, I feel my hands are pretty much tied. And the only thing left for me to do is resign. You can consider this email my 2 week notice.”

28. The claimant quit her position with the employer because she was not cleared to return to work with the employer after she exhausted her leave of absence benefits.

29. The HR Director sent the claimant an email message that stated, “[The Benefits Coordinator] forwarded me the email below. I am accepting this email as your letter of resignation as of Tuesday, November 9, 2021. I want to wish you luck and success in all your future endeavors. Take care of yourself.”

30. At the time the claimant quit, she believed her position with the employer was in jeopardy because she was not cleared to return to work with the employer after she exhausted her leave of absence.
31. At the time the claimant quit, she continued to experience symptoms of her mental health conditions, and she did not know when they would improve.
32. The claimant did not request an additional extension in her leave of absence from the employer because she exhausted her leave of absence options through the State.
33. Throughout her leave of absence, the claimant communicated with the Benefits Coordinator and the Peer Support Coordinator.
34. The employer did not receive a workers' compensation notice or claim from the claimant.
35. On 2/9/2023, during the initial telephone hearing, the claimant continued to undergo treatment through therapy.

[Credibility] Assessment:

The parties did not dispute that the claimant quit her position with the employer. The parties also did not dispute that the claimant was on a medical leave of absence beginning 1/5/2021, and that she remained on a leave of absence on the effective date of her resignation of 11/9/2021. Additionally, the parties did not dispute that the claimant exhausted her available leave of absence benefits through the State for 2021 on 8/14/2021, and that she was not medically cleared to return to work at that time or at the time that she quit.

Given the consistent and undisputed nature of the testimony on these points between the parties, such testimony is deemed credible in this case.

Although the Benefits Coordinator testified that the employer would have allowed the claimant to continue an unpaid leave of absence without a pending PFML appeal, it was reasonable for the claimant to believe that she did not have any further leave of absence extensions based on the employer's response to the claimant's 10/26/2021, email. The claimant stated in her 10/26/2021 [sic], that it was her understanding that the temporary accommodation of an unpaid leave was based on her PFML appeal outcome, and the HR Director did not disagree with her understanding when he responded to her 10/26/2021, email. Additionally, during the initial hearing in this matter, the claimant testified that she did not have any extensions available for a leave of absence because she exhausted her leave of absence options.

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.

Because the claimant quit her position, her eligibility for benefits is governed by G.L. c. 151A, § 25(e)(1), 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.

By its terms, the statute specifies that the claimant bears the burden to show that she is eligible for unemployment benefits.

The record does not indicate that the claimant left her employment as a result of any action taken by the employer. We, therefore, need not consider whether the claimant had good cause for leaving attributable to the employing unit or its agent under G.L. c. 151A, § 25(e)(1).

Our standard for determining whether a claimant's reasons for leaving work are urgent, compelling, and necessitous has been set forth by the Supreme Judicial Court. We must examine the circumstances in each case and evaluate "the strength and effect of the compulsive pressure of external and objective forces" on the claimant to ascertain whether the claimant "acted reasonably, based on pressing circumstances, in leaving employment." Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 848, 851 (1992).

"[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, 412 Mass. at 847 (1992). Medical conditions are recognized as one such reason. *See* Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335–336 (1979) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work). Given the claimant's documented medical condition of anxiety and panic disorder, her work environment's exacerbation of her symptoms, and her doctor's advice to remain out of work, the claimant has demonstrated urgent, compelling, and necessitous reasons to leave her job. Consolidated Findings ## 4, 8, and 26.

However, our inquiry does not stop here. "Prominent among the factors that will often figure in the mix when the agency determines whether a claimant's personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant 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, 597–98 (1974).

The claimant here went out on a medical leave of absence on January 5, 2021. Consolidated Finding # 7. Because her medical condition caused her to remain out of work indefinitely, the claimant took the necessary steps to remain out on leave with the employer’s approval. Her leave requests were granted through November 10, 2021. Consolidated Findings ## 8–10, 14, and 22. The claimant submitted her two weeks’ notice on October 26, 2021, taking her through November 9, 2021, because she was not yet cleared to return to work and believed that no other leave options were available to continue her employment. Consolidated Findings ## 27–29. These findings show that the claimant took several reasonable steps over the course of 2021 to remain employed while she was undergoing treatment for her medical condition and could not work. Consolidated Findings ## 6 and 35.

The claimant’s decision not to request an additional leave of absence once her last leave extension ended on November 10, 2021, was based on her understanding of communications that the employer sent her on October 13, 2021, and October 22, 2021. Consolidated Findings ## 21–23, 25, and 27. These communications stated that the employer was temporarily extending the claimant’s leave of absence until November 10, 2021, while the claimant’s appeal of her PFML denial was pending. The October 13th communication further stated that an indefinite accommodation to the claimant may pose an undue hardship on the employer’s operations. The claimant understood from these communications that any additional leave from the employer would be based on the approval of her PFML request. Consolidated Finding # 27.

Consequently, when she was informed that she had exhausted her available PFML benefits for 2021 and could not reapply until 2022, the claimant believed that the employer would not grant her further leave, and that her only choice was to resign. Consolidated Finding # 27. Based on the wording of the employer’s communications on October 13th and 22nd, including the statement that an indefinite accommodation to the claimant may pose an undue hardship on the employer’s operations, we conclude that the claimant reasonably believed that further efforts to preserve her employment would have been futile. We note that, after receiving the claimant’s resignation on October 26, 2021, where the claimant informs the employer that she was not eligible for PFML, and that she understood from the employer’s prior communications that this denial of PFML prevented her from obtaining another extension of her leave of absence, the employer did not tell the claimant that she was mistaken in her understanding and instead accepted her resignation. Consolidated Finding # 29. The employer’s response to the claimant’s resignation further shows that the claimant’s belief that there was nothing else she could do to remain employed was reasonable.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she involuntarily resigned from the employer due to urgent, compelling, and necessitous circumstances, and she is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is entitled to receive benefits for the week beginning November 7, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 28, 2024



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.

SVL/rh