

The claimant's exacerbated mental health conditions constituted urgent, compelling, and necessitous reasons for resigning. Even though the employer evidenced a clear willingness to work with the claimant to retain her as an employee, the claimant did not inform the employer of the reason she was resigning or make any effort to preserve her employment. Therefore, she is ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0073 7201 99

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 reverse.

The claimant separated from her position with the employer on October 21, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 15, 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 November 10, 2023. 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 additional evidence about the circumstances surrounding the claimant's separation. Only the employer 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 established urgent, compelling, and necessitous reasons for quitting because she was experiencing more severe depressive episodes around the time she resigned, 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 worked for the employer, a media marketing company, as a full-time content marketing specialist, from August 1, 2018, until October 20, 2021.

2. In March 2020, the [COVID]-19 pandemic changed the employer's work environment from fully in-person to fully remote.
3. In September 2020, the employer moved to a flexible work model, allowing employees to choose working arrangements (in-person or remote) that best suited them. The claimant opted to remain fully remote.
4. The claimant had untreated mental health issues for many years. In March 2021, the claimant began individual psychotherapy with a clinical social worker, meeting weekly. The claimant was diagnosed with anxiety and depression. The claimant was high functioning with her anxiety and depression and as a coping mechanism, could perform her job duties as if nothing were wrong.
5. On an unknown date prior to October 4, 2021, the claimant's clinical social worker encouraged the claimant to leave work because it was taking a toll on the claimant's mental health and the claimant feared for her wellbeing and her life.
6. The claimant did not raise any specific concerns at any time with the employer regarding stress, [COVID]-19 working conditions, or her health.
7. The claimant decided to leave her position because her depression and anxiety were becoming more acute, and she feared for her wellbeing and her life. In a letter dated March 8, 2022, the clinical social worker supported the claimant's decision to leave this employment and to actively and immediately seek alternate employment opportunities.
8. On October 4, 2021, the claimant submitted her resignation to the employer, both verbally and in writing. The claimant's last day of work was October 21, 2021. The claimant's written resignation stated that she was moving and did not disclose any information about the claimant's mental health.
9. The claimant did not request a leave of absence, and the employer did not offer a leave or any other potential accommodation because they were not aware of the claimant's mental health situation or any other circumstance where a leave or accommodations would be appropriate.
10. Had the employer been informed of the claimant's mental health issues, they would have honored a request from the claimant for a leave of absence and would have referred her to the benefits available to employees.
11. The employer conducted an exit interview with the claimant after she submitted her resignation. During the exit interview, the claimant stated that she was moving to Texas, wanted a fresh start, wanted to establish herself in Texas, and did not want to worry about working at that time. Based on the claimant's written resignation and her statements in the exit interview, the employer

believed the claimant was resigning to relocate. The employer offered for the claimant to continue working remotely. The claimant declined the offer, informing the employer that it was not a good option for her.

12. The employer did not propose work in a part-time capacity either on a temporary or permanent basis to the claimant because the employer did not have any indication from the claimant that she was seeking to continue working on a part-time basis.
13. The claimant did not fully disclose to the employer why she was quitting and did not disclose her mental health issues to the employer either before or after her resignation because she believed there was a stigma associated with mental health and she did not want to be seen any differently.
14. The claimant filed a claim for unemployment benefits effective October 31, 2021.
15. In November 2021, the claimant relocated to [City A], Texas.
16. The claimant last filed a claim for unemployment benefits the week ending January 29, 2022.
17. In March 2022, the claimant contacted the employer about potential work. The claimant's position had been filled, but the employer offered the claimant freelance work as an independent contractor. The claimant completed five freelance assignments for the employer with invoice dates of 4/18/22, 4/25/22, 5/26/22, 6/14/22, and 8/10/22.

Credibility Assessment:

The claimant's initial fact finding to DUA, the claimant reported that "mental health reasons" was the reason for quitting she gave this employer [sic]. However, this initial reporting is not accurate as to what she told the employer. The claimant was forthcoming in her testimony that she did not disclose any mental health issues to the employer, nor did she disclose quitting due to her mental health. This testimony was corroborated by the employer during the remand hearing. The vice president of human resources offered detailed testimony about the claimant's written resignation as well as her statements during the exit interview all unrelated to the claimant's mental health, instead referencing relocation. The claimant did not testify during the original hearing about the contents of her written resignation or about the exit interview and did not participate in the remand hearing to provide testimony rebutting that of the employer. Given this, it is credible that the employer believed that the claimant was resigning to relocate.

Despite this, the claimant's testimony during the initial hearing that she actually resigned because she feared for her well-being and her life due to the anxiety and depression she was experiencing was persuasive. The claimant consistently

testified about the mental health issues she was experiencing during the original hearing and her testimony was corroborated with the March 8, 2022 letter from her clinical social worker about her diagnoses and in support of the claimant's decision to resign. The claimant also provided an explanation at the original hearing about why she chose not to disclose her mental health issues to the employer.

However, given that the claimant was not at the remand hearing, she could not provide additional testimony on a number of points the Board of Review sought regarding her efforts to preserve her employment. Specifically, the claimant did not detail how [COVID]-19 changed her work environment (other than the consistent testimony from both parties about the shift from in-person to remote work); how any further changes impacted the claimant's ability to perform her job duties; and whether the potential of part time work, a temporary leave of absence, potential changes to the claimant's work environment post-[COVID], or working remotely from a new location would have reduced or alleviated the claimant's mental health challenges. As such, additional findings of fact were not made on these points.

Additionally, since the March 8, 2022 letter is absent any information about discussing a leave of absence and the claimant was not at the remand hearing, no findings were made about whether the claimant discussed the feasibility of taking a leave of absence with a medical provider.

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

As the claimant resigned her position with the instant employer, her eligibility for benefits is properly analyzed under the following provisions under G.L. c. 151A, §§ 25(e), which provide, 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 she left her job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

The claimant testified that she resigned her position with the instant employer because symptoms of her anxiety and depression were worsening. Consolidated Finding # 7. As the claimant did not separate because of any decision made or action taken by employer, we need not consider whether she 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 she separated from her 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). Medical conditions are recognized as one such reason. See Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335–336 (1979).

The claimant's uncontested testimony was that she resigned because she began experiencing more severe symptoms of anxiety and depression, at least in part because of work-related stress. Consolidated Finding # 7. We are satisfied that this constituted an urgent, compelling, and necessitous reason for the claimant's decision to resign. See Consolidated Finding # 24.

However, our inquiry does not end there. To qualify for benefits, a claimant who resigns from her employment must also show that she 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, 597–598 (1974). In his original decision, the review examiner concluded that the record showed the claimant was unable to take steps to preserve her employment because of her exacerbated anxiety and depression. We disagree.

By her own admission, the claimant did not request any accommodation, such as a reduction in hours, leave of absence, or transfer to a different position, prior to submitting her resignation. Consolidated Findings ## 8, 9, and 11. When asked why she did not raise the possibility of any such accommodations with the employer, the claimant testified that she was not sure what options were available to her.¹ She also articulated some hesitancy about discussing the reasons for her resignation. Consolidated Finding # 13.

While a claimant is not required to disclose personal medical information to her employer, the instant employer evidenced a willingness to consider accommodations that would address the

¹ The claimant's uncontested 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).

claimant's needs irrespective of the reason behind her decision to resign. *See* Consolidated Finding # 11. As such, we believe the claimant's preference not to disclose certain information about her mental health would not have prevented her from seeking accommodations that would have allowed her to preserve her employment. Further, as claimant was able to work out her notice period and subsequently chose to seek work with the instant employer in March, 2022, we do not believe that she has met her burden to show that she reasonably believed, under the circumstances, that any steps to preserve her employment would have been futile. *See* Consolidated Finding # 17.

We, therefore, conclude as a matter of law that the claimant did not meet her burden pursuant to G.L. c. 151A, § 25(e)(1), to show that she took reasonable steps to preserve her employment before quitting.

The review examiner's decision is reversed. The claimant is denied benefits for the week of October 31, 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.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 2023



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