

The claimant's physical and mental health problems were not resolved by a leave of absence. Due to short-staffing, the employer expected her to work long hours, which she could not do and also meet her own child-care responsibilities. Because the employer could not reduce her schedule as she required, Board held she had urgent, compelling, and necessitous reasons to leave. The claimant was eligible for benefits pursuant to G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0073 8613 02

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 29, 2021. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 10, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant,¹ the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on March 1, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without showing good cause attributable to the employer or urgent, compelling, and necessitous reasons, and, thus, she was disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not present urgent, compelling, and necessitous circumstances to leave her job, is supported by substantial and credible evidence and is free from error of law, where the record shows that the claimant struggled to work the very long hours demanded by her job and also deal with her own recent cancer diagnosis and treatment, migraine headaches, anxiety, major depression, and child-care demands.

Findings of Fact

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

¹ The claimant's former employer was invited to participate in the hearing as a witness-only but did not attend.

1. The claimant worked full-time as a case manager for the employer's adolescent group home business from 2/10/14 until 10/29/21. The claimant worked from 9:00 a.m. until 5:00 p.m. on Monday through Friday and was paid \$21.74 per hour.
2. During the COVID-19 pandemic, the claimant found that the employer was short-staffed, and she was required to remain at work until replacement staff reported to relieve her. The claimant did not complain to the employer about working additional hours.
3. The claimant was on a three-month paid leave of absence prior to returning to work on 8/23/21. The claimant took the leave because she felt exhausted and was experiencing stress and panic attacks. The claimant was diagnosed with cancer in 2019 and had not allowed herself time to process this diagnosis. The claimant underwent surgery due to the cancer diagnosis. The claimant sought treatment for her health and was provided medication and counseling. The claimant was not advised by any health care provider that she should not return to work in August, or that she should quit her work.
4. After returning to work in August, the claimant requested her work schedule be changed so that she would have Wednesdays off. The claimant also requested to have alternating Mondays and Fridays off. The employer agreed to change the claimant's schedule so that she would have Wednesday off, but it was unable to accommodate her request to have Mondays and Fridays off.
5. On 10/18/21, the claimant notified the employer that she was quitting and her last day at work would be 10/29/21. The claimant told the employer that she was leaving due to medical reasons. The claimant did not inform the employer that she was quitting for any reason other than her health. The claimant did not request additional time off for a leave of absence because she assumed she would only be allowed one leave. The claimant would not have quit if the employer agreed to allow the claimant a flexible work schedule.
6. The claimant filed an initial claim for unemployment insurance benefits, effective 11/7/21. In her responses on a DUA factfinding questionnaire, the claimant wrote that she quit her work because of ovarian cancer, anxiety, and major depression. The claimant did not cite any issues with the employer as her reason for quitting.
7. On 12/10/21, the DUA issued the claimant a Notice of Disqualification, finding her ineligible for benefits under Section 25(e)(1) of the law for the week beginning 10/29/21, and indefinitely thereafter.
8. On 12/15/21, the claimant appealed the Notice of Disqualification.

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 ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 3, which states that the claimant was not advised by a health care provider that she should quit her work, as it is unsupported by the record. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant resigned from her job, her eligibility 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.

The express language of these provisions assigns the burden of proof to the claimant.

The findings show that, as a result of the COVID-19 pandemic, the claimant's employer was short-staffed, which required the claimant to frequently continue working beyond her normal shift until replacement staff arrived. *See* Finding of Fact # 2. The claimant took a leave of absence because she felt exhausted, was experiencing stress, panic attacks, had recently undergone surgery for cancer, and was being treated for medical issues, including medication as well as counseling. *See* Finding of Fact # 3. The claimant testified that, after her return from the leave of absence at the end of August, and through October, when she resigned, the short staffing problem continued. It meant that she often had to work well beyond her normal shift ending time of 4:45 p.m., sometimes working 80–90 hours a week, because there simply were no replacement staff available. *See* Finding of Fact # 1. She explained that, if she just left, she could be charged with neglect under G.L. c. 119, § 51A.²

At some point after returning from her leave of absence, the claimant asked the employer to change her schedule so that she had Wednesday, as well as either Monday or Friday off each week, but the employer would only agree to give her Wednesday off. Finding of Fact # 4. This finding fails to elaborate on the reason that the claimant requested this reduced schedule. As the claimant explained, upon returning to work, she still had the long and unpredictable hours. This caused a great deal of stress, because she could not be available to care for her own three children when they came home from school, and she could not get to her own medical appointments. Her anxiety,

² While not explicitly incorporated into the review examiner's findings, this as well as other portions of the claimant's testimony referenced below are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are 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).

panic attacks, high blood pressure, and migraine headaches returned. She further testified that, during this time, her medical doctor and counselor advised her to look for a different job.³

We agree with the review examiner that the record fails to establish good cause attributable to the employer to resign within the meaning of G.L. c. 151A, § 25(e)(1). 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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). In this case, the claimant resigned when she could not get the extra Monday or Friday off each week. There is nothing in the record to suggest that, in denying the full request, the employer was motivated by anything other than staffing needs. Thus, the record fails to show that it acted unreasonably.

However, we disagree with the review examiner's conclusion that the claimant did not demonstrate urgent, compelling, and necessitous reasons for resigning. 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).

In her decision, the review examiner notes that the medical documentation showing the claimant's counseling for stress and anxiety are undated, and, for this reason, she concludes that the claimant failed to produce evidence that showed she required or received continued counseling for stress and anxiety between August 23, 2021, and her resignation on October 29, 2021. As medical evidence, the claimant submitted Exhibit 6, which is a series of screen shots showing behavioral health notes from her psychologist and a surgical history from the claimant's medical My Chart account. To be sure, the dates on these screen shots are cut off, although the year 2021 is evident.⁴ The review examiner observed the cut off dates during the hearing. However, when the claimant offered to look up the dates in her My Chart account, the review examiner neither encouraged her to do so, nor asked the claimant to submit other documents displaying the full date. Nonetheless, as is, the medical records presented do corroborate that, in 2021, the claimant was undergoing counseling, had been diagnosed with Generalized Anxiety Disorder, Major Depressive Disorder, and that she had undergone surgery related to endometrial cancer in late 2019.

The review examiner also discredits the claimant's assertion that she left her job due to stress and panic attacks connected to the need to work additional hours, because the claimant never complained to her employer or told the employer that the additional hours factored into her decision to resign. Credibility assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. See School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). "The test is whether the finding is supported by "substantial evidence."" Lycurgus v. Dir. of Division of Employment Security, 391 Mass. 623, 627 (1984) (citations

³ In response to the review examiner's questions, the claimant testified consistently that, due to her mental health, these providers advised her to leave her job and find somewhere else to work. It is not clear why the review examiner found otherwise.

⁴ Exhibit 6 is also part of the unchallenged evidence in the record.

omitted.) “Substantial evidence is ‘such evidence as a reasonable mind might accept as adequate to support a conclusion,’ taking ‘into account whatever in the record detracts from its weight.’” *Id.* at 627–628, *quoting New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 466 (1981) (further citations omitted.) In this case, we believe the credibility assessment is unreasonable.

The reason that the claimant had to continue working past her shift was because the employer was short-staffed during the COVID-19 pandemic. *See* Finding of Fact # 2. The claimant explained that, at the time, they were in a staffing crisis, and that they knew there simply was no staff available to replace her. Under these circumstances, she could reasonably have concluded that complaining about the long hours was futile.

The review examiner also rejects that the claimant’s health was a reason for leaving her job, finding contradiction in the fact that the claimant said she would have continued working for the employer, if she had gotten the additional requested days off. *See* Finding of Fact # 5. We see no contradiction. The record shows that it was a combination of the claimant’s mental health struggles, migraine headaches, and high blood pressure in connection with very long, unpredictable hours and the competing demands of her own child-care responsibilities that created an untenable situation. Apparently, the claimant believed that reducing her schedule to three days a week would have enabled her to keep performing her job. When the employer could not accommodate that, we believe she acted reasonably under the circumstances in submitting her resignation.

Finally, the review examiner concluded that the claimant made no attempt to preserve her job before leaving. “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 v. Dir. of Department of Labor and Workforce Development*, 66 Mass. App. Ct. 759, 766 (2009), *quoting Raytheon Co. v. Dir. of Division of Employment Security*, 364 Mass. 593, 597–98 (1974). In reaching her conclusion, the review examiner ignores the fact that the claimant had already taken a three-month leave of absence, and then attempted to reduce her schedule before quitting. We believe these efforts demonstrate reasonable attempts to preserve her employment.

We, therefore, conclude as a matter of law that the claimant has demonstrated urgent, compelling, and necessitous reasons for leaving her employment 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 24, 2021, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 27, 2022



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

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.

AB/rh