

Where the claimant was deployed to provide clinical mental health emergency relief services for a FEMA contractor in response to a hurricane, and she could not continue working both remotely for the employer and still meet the demands of the emergency relief work, held she separated from the employer due to urgent, compelling, and necessitous circumstances. When laid off by the contractor shortly thereafter, she was not disqualified for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0073 9919 90

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 November 3, 2021. She subsequently separated from another employer and filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 4, 2021. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on May 5, 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 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 was ineligible for benefits where she left the employer in order to work full-time assisting hurricane victims in Louisiana, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant had worked for the [Federal Agency] before leaving that employment to begin permanent part-time employment with this instant

employer the Town [A], Massachusetts in the town's Department of Public Health.

2. On 03/11/21, the claimant began a permanent part-time position with [Employer] working 18.5 hours per week at a rate of \$21.00 per hour as the town's Emergency Preparedness Coordinator.
3. The claimant's part-time job with the instant employer town was not in any jeopardy at the time the claimant made the decision to voluntarily leave this permanent part-time position.
4. On 10/31/21, the claimant submitted her written resignation effective 11/03/21. The employer town immediately filled the vacant position.
5. The claimant's former employer, [Federal Agency], had asked the claimant if she were interested in working a temporary fulltime work assignment for a [Federal Employer] contractor in Louisiana assisting hurricane victims there.
6. The claimant decided to quit her job with [Employer] to work full-time temporarily for the contracting company [B] in Louisiana.
7. The temporary fulltime job with [B] in Louisiana involved working up to 90 hours per week at a rate of \$40.00 per hour as a Disaster Mental Health Counselor.
8. After completing her temporary full-time assignment in Louisiana, the claimant filed a claim for unemployment benefits in Massachusetts on 11/19/21, effective 11/14/21.
9. On 12/14/21, the claimant was sent a Notice of Disqualification noting that the claimant had chosen to leave her permanent part-time job to accept an offer to work in temporary full-time employment. This was determined to be a voluntary quit without good cause attributable to the employing unit.
10. The claimant requested a hearing.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. The portion of Findings of Fact ## 1 and 5 which refer to [Federal Agency] as the claimant's former employer is unsupported by the record. We further believe that Finding of Fact # 1 is misleading to the extent it suggests that the claimant had severed her former employment to work for the employer in this case. 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 voluntarily separated from her position from the employer, her eligibility for benefits is properly analyzed pursuant to 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.

These statutory provisions expressly assign the burden of proof to the claimant.

The review examiner concluded that the claimant voluntarily left her job with the employer without demonstrating good cause attributable to the employer. We agree. The claimant did not leave this job due to anything the employer did or did not do. *See* Finding of Fact # 6.

However, the review examiner did not consider, alternatively, whether the claimant's reason for resigning constituted urgent, compelling, and necessitous circumstances pursuant to the above provision. 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).

During the hearing, the claimant explained that she had an on-going employment relationship with a [Federal Agency] contractor, an emergency management agency, and was periodically deployed to perform emergency relief work such as presidentially declared large scale emergencies. That contractor had activated her employment on September 6, 2021, to provide services as a disaster mental health clinician for survivors of Hurricane Irma at an emergency medical shelter in [City C]. *See* Findings of Fact ## 5 and 7. As the claimant explained, the duration of the emergency relief work is unpredictable, lasting as long as the need is there. For a period, she attempted to perform both jobs, working remotely from Louisiana for the instant Massachusetts employer, but could not continue, as the [City C] disaster relief work demanded up to 90 hours per week. *See* Finding of Fact # 7. When she resigned from the employer on November 3, 2021, she did not know that the FEMA contractor would lay her off shortly thereafter. *See* Finding of Fact # 4.¹

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. *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).

Thus, the claimant separated from the employer in order to provide emergency clinical mental health relief services to hurricane survivors. In our view, this demonstrates a need that is urgent and compelling within the meaning of G.L. c. 151A, § 25(e).

However, our analysis does not end 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 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).

Although not mentioned in the review examiner’s decision, the claimant provided further uncontested testimony that, in addition to performing both jobs for a while, she discussed a leave of absence with her former supervisor at the employer, but she did not qualify because she was a part-time employee. These efforts demonstrate reasonable attempts to preserve her job with the employer.

We, therefore, conclude as a matter of law that the claimant separated from the employer due to urgent, compelling, and necessitous circumstances, and she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning November 14, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 21, 2022



Paul T. Fitzgerald, Esq.
Chairman



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