

Claimant had an urgent, compelling, and necessitous reason to leave his warehouse job due his daughter's serious medical needs. Given his own medical problems, efforts to preserve a job of this nature would have been futile. Held he was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0074 7746 48

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 his position with the employer on January 8, 2022. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 5, 2022. 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 June 2, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without making reasonable efforts to preserve his job, and, thus, he 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Only the claimant responded. 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 had urgent, compelling, and necessitous reasons to leave his warehouse job due to his own medical condition but is disqualified because he failed to make efforts to preserve his job, 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. Beginning on January 25, 2021, the claimant worked full-time (40 hours weekly) as a shipping and receiving warehouse associate for the employer, a manufacturing company.
2. The claimant's hourly rate was \$19.00.

3. The claimant's direct supervisor was the employer's warehouse supervisor.
4. The claimant worked Monday through Friday from 8 a.m. to 3:30 p.m.
5. The claimant has a medical condition that causes blood clots to develop in his legs. Due to his condition, the claimant is unable to stand for long periods of time without experiencing pain and swelling.
6. The claimant's employment required he stand for the majority of the workday, exacerbating his medical condition.
7. On January 6, 2022, the claimant left work without finishing his shift because his daughter with cerebral palsy had a medical emergency.
8. On January 8, 2022, the claimant texted the supervisor he quit his employment, effective immediately, because he had to "move and take care of my family and myself at that, and there's no way I could if I'm not with them."
9. The claimant last physically worked for the employer on January 6, 2022.
10. The claimant never told the employer he was considering quitting his employment.
11. The claimant never contacted the employer's human resources service before quitting his employment.
12. The claimant never asked to transfer to a different position, and a transfer may have been available.
13. The claimant never requested a leave of absence, and a leave of absence may have been available.
14. The claimant never requested a reduction in work hours, and a reduction would have been available.
15. The claimant's job requirements never changed.
16. Prior to quitting his employment, the employer told the claimant he could sit more frequently throughout the course of the day, and suggested the claimant sit during his lunch break. The claimant declined.
17. At the time he quit his employment, the claimant's job was not in jeopardy.
18. At the time he quit his employment, the employer had work available.

19. On January 6, 2022, the claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA) with an effective date of January 2, 2022.
20. In his responses to the DUA questionnaires, the claimant did not allege harassment or racial discrimination.
21. On February 5, 2022, the claimant asked the owner to submit a letter to the DUA in support of his application for unemployment. The claimant asked the owner to include “the other reasons” why he quit his employment: (1) his leg swelling and daily pain, (2) his daughter’s illness and need for 24-hour care, (3) his wife’s inability to walk or work due to a foot injury, and (4) a lack of transportation.
22. On June 16, 2022, the claimant is scheduled for surgery to treat his medical condition.

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 original conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s findings of fact and deems 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 disqualified from receiving benefits based upon his separation from employment.

Because the claimant resigned from his job, this case is properly analyzed pursuant to 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.

The express language of the above provision places the burden of proof upon the claimant.

There is nothing in the record which indicates that the employer did or failed to do something to cause the claimant to leave his job. Consequently, we agree that the claimant failed to show that he left for good cause attributable to the employer. Rather, the question is whether he has shown that he left for urgent, compelling, and necessitous reasons.

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). Both medical conditions and domestic responsibilities can constitute such circumstances. See Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (childcare demands may constitute urgent and compelling circumstances) (citations omitted.); 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).

In her decision, the review examiner focused on the claimant’s own medical condition, which made standing for extended periods painful, as the basis for concluding that he had an urgent, compelling, and necessitous reason to resign. See Findings of Fact ## 5 and 6. However, Findings of Fact ## 7 and 9 show that the claimant left his job on January 6, 2022, his last physical day of work, because his daughter, who had cerebral palsy, had a medical emergency. Specifically, the claimant explained that his daughter had stopped breathing and had to be hospitalized. He testified that he had to care for his daughter because she needed 24-hour supervision, his other daughter was not trained to deal with this type of emergency, and his wife worked. In response to the review examiner’s questions, the claimant also stated that, as much as his leg pain made working difficult, and he would have had to leave eventually to have surgery, he would not have left that day if it were not for his daughter’s medical issues.¹ From this, we can reasonably infer that the claimant’s leg condition was not so urgent that he had to quit on January 6, 2020. It was his daughter’s medical needs. Thus, we agree that the claimant had an urgent, compelling, and necessitous reason to leave work, but it was due to his daughter’s medical issues, not the claimant’s.

Our analysis does not stop there. Even where the claimant has shown that circumstances beyond his control were forcing him to resign, “[p]rominent 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 [his] employment’ as would indicate the claimant’s ‘desire and willingness to continue [his] 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).

The review examiner disqualified the claimant on the ground that he failed to make reasonable efforts to preserve his job before resigning. Her findings provide that he declined to abide by the employer’s offered accommodation to sit more frequently throughout the day and to sit down on his lunch break. See Finding of Fact # 16. Before leaving, he did not contact human resources, request a transfer to a different position, ask for reduced hours, or seek a leave of absence. Findings of Fact ## 11–13. While sitting more frequently during the day could have alleviated his leg pain, it would not have helped him address his daughter’s medical issues. Requesting a transfer or working reduced hours also would not have addressed his need to be present for his daughter’s 24-hours-per-day supervision.

¹ This portion of the claimant’s testimony, while not explicitly incorporated into the review examiner’s findings, 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).

It is unclear what the review examiner expected the claimant to accomplish by contacting human resources, unless it was to request accommodations for his leg pain or to obtain a leave of absence. Again, accommodations for his medical problem would not have helped him care for his daughter's immediate needs. In this case, we also decline to disqualify the claimant for not requesting a leave of absence. His daughter's condition appeared to be on-going, and a medical note from his Nurse Practitioner, admitted as Exhibit 7, indicates that the claimant's own medical condition rendered him unable to return to work, until he obtained clearance from his vascular surgeon.²

In short, his urgent departure was due to the need to care for his daughter, but when evaluating what efforts to preserve his job would have been reasonable, we cannot ignore his own medical condition. *See Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 94 (1984) (to be eligible for benefits, an employee is expected to make reasonable attempts to preserve his employment but is not required to request a transfer to other work or a leave of absence). Given this record, the claimant could reasonably have concluded that none of the steps listed in the review examiner's findings would have helped him continue working for the employer at the time.

We, therefore, conclude as a matter of law that the claimant had urgent, compelling, and necessitous reasons to resign from his job within the meaning of G.L. c. 151A, § 25(e)(1).

However, in order to collect benefits, a claimant must also meet the requirements under G.L. c. 151A, § 24(b), to be able, available for, and actively seeking work during the period of his claim. We have asked the DUA to investigate whether the claimant has been able to meet those requirements.

² This exhibit is also part of the unchallenged evidence in the record.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 2, 2022, and for subsequent weeks if otherwise eligible.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 18, 2022



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.

AB/rh