

The claimant has met her burden to show that she resigned from her employment due to the urgent, compelling, and necessitous circumstances of anxiety and depression, which did not resolve with therapy and a leave of absence. Held she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0075 1429 14

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 January 12, 2021. She filed a claim for unemployment benefits with the DUA, effective March 14, 2021, which was denied in a determination issued on March 2, 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 October 18, 2022. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant voluntarily 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 afford the employer an opportunity to present 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 was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), as her resignation due to anxiety and depression constituted urgent, compelling, and necessitous circumstances, 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 full-time as the residential director for a health and human services provider from 2018 until 1/12/2021.

2. Prior to 2018, the claimant worked from 2012 in progressively more responsible positions.
3. The claimant was responsible for residents with significant medical issues and oversaw a staff of more than 20 members.
4. Shortly after the onset of the pandemic, the claimant was responsible for testing 25 staff bi-weekly for [COVID-19].
5. The claimant's mother with whom she lived was diagnosed with breast cancer in January, 2020 and undergoing treatment through April, 2021.
6. The claimant was concerned about exposing her mother to [COVID-19].
7. The claimant's supervisor agreed to help the claimant with testing staff.
8. In 2020, the claimant began to suffer from anxiety and depression and in October, 2020 started treatment with a mental health professional.
9. The claimant participated in regular therapy sessions to attempt to deal with the family, personal, work and health issues contributing to her anxiety and depression.
10. In December, 2020, the claimant informed the employer that she would need to take a leave to deal with her mental health issues.
11. The claimant and the employer agreed to a six week leave, beginning 1/12/2021.
12. In February, the claimant requested an additional two-week leave and provided a supporting letter to the employer.
13. The claimant's therapist advised her that the thought of returning to her position as residential director was causing her too much stress and recommended she resign.
14. The claimant spoke with the employer about options, including asking to be let go.
15. The claimant told the employer that she was still concerned about [COVID-19] exposure for her vulnerable family member.
16. The employer suggested her exposure could be mitigated by staying in her basement office, not interacting with the residents on the second floor and limiting face-to-face communication with staff, and/or flexing her schedule.
17. There were no other suitable positions in the agency.

18. The claimant could have requested FMLA but had already taken 8 of the 12 weeks for which she was eligible.
19. The claimant did not request an additional leave as she did not believe that would resolve the problem as her issues stemmed from other things in addition to the stress of her job.
20. The employer encouraged her to write a resignation letter and explain that her decision to leave was [COVID-19] related.
21. The claimant submitted her resignation on 3/1/2021.
22. The employer accepted her resignation.

Credibility assessment:

The credible testimony of the claimant in the initial hearing and the employer witness during the remand hearing was largely free of disagreement or conflict regarding the facts of the claimant's employment and separation. In the initial hearing, the claimant testified that she resigned due to mental health issues that were the result of stress on the job and other personal reasons, including [COVID-19] concerns. In the subsequent hearing, the employer testified that she was aware of the claimant's mental health issues but understood her reason for leaving was due to [COVID-19] concerns.

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 original 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. As discussed more fully below, we also agree with the review examiner's legal conclusion that the claimant is eligible for benefits.

Because the claimant resigned from her employment, we analyze her eligibility for benefits 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 these provisions assigns the burden of proof to the claimant.

In this case, the consolidated findings show that the claimant resigned from her job due to mental health issues. *See* Consolidated Findings ## 8–10 and 13. We agree with the review examiner that this reason for leaving was not for good cause attributable to the employer, as it was due to her personal circumstances and not any employer action. *See* Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980) (in determining whether there was 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 also agree that the claimant has shown that her reasons for leaving constituted urgent, compelling, and necessitous circumstances. 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). 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). In this case, the claimant’s medical conditions were anxiety and depression, which were serious enough that she sought professional treatment. *See* Consolidated Findings ## 8 and 9.

However, our analysis does not stop there. “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).

The record shows that the claimant tried to address her mental health condition with therapy initially, followed by a six-week leave of absence in January, 2021, and then another two-week leave in February. *See* Consolidated Findings ## 10–12. We can reasonably infer that the leaves of absence did not alleviate her condition, as her therapist ultimately recommended that she resign. *See* Consolidated Finding # 13. The consolidated findings further indicate that, prior to resigning, she explored further options, but the accommodations would not address the entire problem. *See* Consolidated Findings ## 14–19. In our view, this record shows that the claimant made reasonable efforts to preserve her job prior to separating from employment.

We, therefore, conclude as a matter of law that the claimant separated from her position due to urgent, compelling, and necessitous reasons 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 March 1, 2021, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 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.

AB/rh