Claimant, whose work environment exacerbated his mental health condition, quit for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e). Because the claimant's initial leave of absence did not help, as the claimant's symptoms returned after he resumed working, further efforts to preserve would have been futile.

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Issue ID: 0077 3125 87

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 May 6, 2022. He filed a claim for unemployment benefits with the DUA, effective June 19, 2022, which was approved in a determination issued on August 17, 2022. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on April 1, 2023. 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, or urgent, compelling, and necessitous reasons and, thus, 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. Neither party 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 voluntarily left employment without good cause attributable to the employer, or urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where the review examiner found that, after returning to work from a medical leave of absence, the claimant's symptoms returned.

Findings of Fact

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

1. The claimant worked for the employer, a higher education institute, from October 13, 1998, until May 6, 2022. The claimant was most recently [employed] as an associate vice president for enterprise technology services.

2. The claimant's supervisor was the vice president of technology resources.

3. In September, 2021, the employer's previous head of technology services resigned the position.

4. On September 24, 2021, the claimant was offered and accepted the role of interim head of technology resources beginning October 1, 2021.

5. In approximately October, 2021, the claimant received a call from the vice president of human resources (the VPHR), that a junior manager (CW-1) from the claimant's team was being promoted to a new role as the senior director of CRM services. CW-1 would report directly to the vice president of information technology. The VPHR asked the claimant to announce the promotion to his department and told the claimant that it was important to say that he supported the decision.

6. CW-1 had previously reported to the senior director for enterprise technology services (CW-2).

7. The decision to promote CW-1 was made by the employer's president (the President) without input from the claimant or from CW-2.

8. The President made the decision to promote CW-1 because the senior vice president of the online division believed that CW-1 was critical to the future success of the division, and CW-1 had represented to the employer that she had another job offer. The President made the decision quickly and without input from the information technology department because the decision was time sensitive.

9. The President had the authority to make the decision.

10. It was uncommon but not unprecedented for employees to skip a level in promotions.

11. The claimant believed that the decision should not have been made without his input.

12. The claimant believed that it was inappropriate to promote CW-1 more than one rung in the organizational hierarchy.

13. The claimant believed CW-1 had gone over his head in acquiring the promotion.

14. The claimant did not want to represent that he was part of the decision to promote CW-1.

15. On October 22, 2021, the claimant sent an email announcing CW-1's promotion. In the email, the claimant did not say that he was part of the decision or that he supported the promotion.

16. On November 18, 2021, the claimant resigned his position as interim head of technology resources. The claimant returned to his role as vice president of technology resources.

17. The claimant's job duties were not meaningfully affected by CW-1's promotion.

18. The claimant believed that it was unfair that CW-1 would report directly to the vice president while other services would have to continue reporting through intermediaries.

19. The claimant believed that it was unfair to promote CW-1 in light of national political events because CW-1 was not an ethnic minority.

20. The claimant believed that CW-1's promotion would cause other employees to seek promotions without the input of their managers.

21. The claimant believed that some employees might believe he had made the decision to promote CW-1.

22. The claimant did not tell anyone that he had made the decision. No one told the claimant that they believed he had made the decision. CW-2 told the claimant that she believed he had not been part of the decision.

23. The claimant experienced stress which caused him to have difficulty sleeping.

24. The claimant believed the decision to promote CW-1 was the cause of his stress.

25. On December 1, 2021, CW-2 resigned her position because she had not been consulted about CW-1's promotion.

26. On an unknown date, the claimant's doctor diagnosed him with adjustment disorder with depressed mood. The doctor recommended that the claimant not work while undergoing treatment.

27. On January 18, 2022, the claimant began a leave of absence. The leave of absence was paid through short-term disability. The leave was extended due to [the] death of the claimant's father.

28. During the claimant's leave, the claimant believed his condition was improving.

29. On April 3, 2022, the claimant returned to work.

30. When the claimant returned to work, he believed that his symptoms returned.

31. The claimant did not request a new leave of absence because he did not think it would help.

32. The claimant did not request a transfer to a different position because he did not think any other position would make sense.

33. On April 12, 2022, the claimant gave notice to the employer that he was quitting effective May 6, 2022.

34. The claimant was not at risk of being fired.

35. The employer had ongoing work available for the claimant.

36. The claimant's job position and duties were not changed by CW-1's promotion.

37. On May 6, 2022, the claimant worked his last day for the employer.

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. 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 reject the review examiner's legal conclusion that the claimant left his employment without urgent, compelling and necessitous reasons.

Because the claimant resigned from his position with the employer, his eligibility for benefits is properly analyzed pursuant to the following provisions under G.L. c. 151A, § 25(e), which state 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 was not entitled to benefits, because he did not establish good cause attributable to the employer, or urgent, compelling and necessitous reasons for quitting.

In October of 2021, the employer's president promoted a junior manager to a senior director role without consulting with the junior manager's supervisor or the claimant, who at the time was the

interim head of the department in which the junior manager worked. *See* Findings of Fact ## 4–7. Although it was not typical for an employee to be promoted directly from a junior to a senior role or without first seeking input from the employee's management team, it was not unprecedented in the employer's history, and the president had the authority to do so. *See* Findings of Fact ## 9–10. The claimant disagreed with the manner by which the junior manager was promoted and felt that the president had acted inappropriately. *See* Findings of Fact ## 11–13 and 18–20. The claimant also worried that other employees would seek to be promoted without input from their managers, and that they would think that the claimant had participated in the junior manager's promotion. *See* Findings of Fact ## 20–21.

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). Although the findings show that the claimant was unhappy with the junior manager's promotion, the record fails to show that the employer's actions in this or any other regard were unreasonable. Thus, we agree that the claimant has not shown good cause attributable to the employer to resign. However, the evidence does establish that the claimant quit for urgent, compelling, and necessitous reasons.

The claimant began to experience stress as a result of the junior manager's promotion, and he was eventually diagnosed with adjustment disorder with depressed mood. *See* Findings of Fact ## 23–24 and 26. He was having difficulty sleeping and experiencing panic attacks as a result of the stress.[1] *See* Finding of Fact # 23. The claimant began a leave of absence due to his medical condition on January 18, 2022, and saw his symptoms improve during the leave. *See* Findings of Fact ## 26–28. However, upon returning to work on April 3, 2022, the claimant's symptoms returned. *See* Findings of Fact ## 29–30. Consequently, the claimant resigned from his employment on May 6, 2022. *See* Findings of Fact ## 33 and 37.

"[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) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work). Given the claimant's medical condition of adjustment disorder with depressed mood and the fact that his work environment appeared to be exacerbating his symptoms, the claimant has shown that he had urgent, compelling, and necessitous reasons to leave his employment.

However, our inquiry does not stop 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

[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).

'reasonable means to preserve [his] employment' as would indicate the claimant's 'desire and willingness to continue [his] employment.'" Norfolk County Retirement System, 66 Mass. App. Ct. at 766, *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–98 (1974).

We note that, to be eligible for benefits, a claimant is expected to make reasonable attempts to preserve his employment. However, he is not required to request a transfer to other work or a leave of absence. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). Here, after returning from a leave of absence and noticing an exacerbation of his symptoms, the claimant decided to resign rather than requesting another leave of absence or a transfer to a different position. *See* Findings of Fact ## 30–32. Based on these findings, the review examiner concluded in the original decision that the claimant did not take reasonable steps to preserve his employment. We disagree.

The claimant did not seek a transfer to a different position, because he did not believe that another position would make sense for him. *See* Finding of Fact # 32. Further, he did not request a second leave of absence, because he did not believe that it would help his condition. *See* Finding of Fact # 31. We believe that the claimant's initial request for a leave of absence shows his willingness to continue his employment, as he took that leave with the hope of alleviating his symptoms and being able to eventually continue with his work. His belief that taking another leave of absence would be futile was reasonable, because, although his symptoms improved while on his initial leave of absence, they returned soon after he resumed working again.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he involuntarily resigned from the employer due to urgent, compelling, and necessitous circumstances, and he 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 June 19, 2022, and for subsequent weeks if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - April 26, 2024

Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

SVL/rh