

Where the short staffing and untrained temporarily hired staff created a heavy workload and aggravated the claimant's anxiety, she had urgent, compelling, and necessitous reasons to resign. A medical leave of absence would not have helped, as she would have had to return to the same working conditions. Held she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0078 0670 98

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 August 11, 2022. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 2, 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 November 25, 2022. We accepted the claimant's application for review.

Benefits were denied after the review examiner concluded that the claimant voluntarily left employment without 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). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional evidence about the claimant's working conditions and her medical condition. Both parties 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 ineligible for benefits because she failed to make reasonable efforts to preserve her employment before leaving her medical technologist position due to anxiety, 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. From September 8, 2014, until August 11, 2022, the claimant worked full-time for the employer, a clinic, as a Senior Medical Technologist II.
2. Her rate of pay was \$39.14 per hour, plus an additional \$8.75 per hour for the third shift.
3. At the time of hire, the claimant elected to work the third shift due to the higher rate of pay.
4. At the time of hire, the claimant worked 8 days on, and 6 days off. The employer required her to work every other weekend and other employees worked the same schedule.
5. There was no other schedule available on the 3rd shift.
6. The claimant was responsible for the following departments: hematology, chemistry, microbiology, urinalysis, and the blood bank. The employer had to hire traveler technicians due to staffing shortages in 2022. The traveler technicians were not trained in the blood bank and the claimant had to make sure all departments were covered. The blood bank requires at least 2 technicians on duty because the employer is a level 1 trauma center.
7. During late December 2021 or early January 2022, the claimant had heart palpitations, her heart was pounding, and she could barely catch her breath. The claimant reported to work on this day but left shortly after to go to the emergency room. The claimant's co-workers also recommended that she go to the emergency room for care.
8. The employer's workload increased around January 2022.
9. The claimant has anxiety and takes medication.
10. The claimant's symptoms from her anxiety included heart palpitations, trouble sleeping, panic attacks and worrying about going to work.
11. The overtime shifts were not causing the claimant anxiety, rather, the workload and the traveler technicians' lack of training in all areas caused the claimant stress and anxiety because she had to cover multiple departments. A shorter work week may have reduced the claimant's anxiety, but a shorter work week was not available.
12. The employer did not always have the necessary coverage for the 3rd shift. The employer's staffing minimum is 6 people. There were times when the employer was short-staffed with only 5 technicians working, which also caused the claimant anxiety.

13. The claimant accepted overtime shifts. Overtime shifts were not required nor was it a condition of employment. If the claimant did not accept overtime shifts, the employer would have found coverage from someone else, most likely someone that worked the 1st shift.
14. The claimant worked the following overtime shifts during the last two months of her employment: June 19, 2022, from 10:00 p.m. to 3:00 a.m., July 6, 2022, from 10:00 p.m. to 7:00 a.m., July 19, 2022, from 10:00 p.m. to 7:00 a.m., and August 2, 2022, from 10:00 p.m. to 7:00 a.m.
15. The claimant felt pressure to pick up these shifts because her other colleagues picked up overtime shifts despite feeling tired.
16. The claimant did not request a leave of absence prior to separating.
17. The employer would have granted a leave of absence and the claimant would have been able to return to her position.
18. The claimant's reason for not requesting a leave of absence was because she did not want to return to her position due to the workload.
19. The employer would grant a leave request immediately and allow 15 days for the claimant to provide paperwork.
20. The claimant was in good standing with the employer and the employer still had work available for the claimant.
21. The claimant's doctor did not recommend that she quit her job. The claimant's doctor recommended that she take medical leave.
22. The doctor's note dated August 10, 2022, states: "I have been treating [the claimant] for a major medical condition. I recommend she take medical leave as of 8/10/22."
23. The major medical condition was anxiety.
24. The claimant quit her job due to her anxiety on August 11, 2022.
25. On or about October 10, 2022, the claimant returned to work for the employer in the blood bank after resigning her initial position. The claimant currently works the 3rd shift and her schedule is 4 days on, 3 days off. The claimant works only in the blood bank and the blood bank is one department. The workload is less compared to her prior position because she only works in one department

Credibility Assessment:

The claimant credibly testified that the increased workload and staffing shortages caused her anxiety. The employer's stat lab manager did not dispute that the claimant's workload increased or that the employer was short staffed on occasion. The stat lab manager also did not dispute the reasons the claimant quit, which was due her anxiety. The claimant's doctor's note dated August 11, 2022, corroborates her testimony that it was recommended that she take medical leave. The claimant's reasons for not taking the medical leave were because she would have to return to the same position, which she was unable to do due to her anxiety.

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 conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. Although Consolidated Finding # 21 is accurate insofar as it reflects the written medical note provided to the employer, it fails to capture further undisputed testimony provided by the claimant, as described below. In adopting the remaining findings, we deem 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. However, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant voluntarily separated from her position with the employer, her 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.

In this case, there is no question that, at least since January, 2022, the claimant's working conditions had been difficult due to staffing shortages, working with newly trained traveler technicians who were not able to work in all departments, and her responsibility to cover multiple departments. *See Consolidated Findings ## 6, 8, and 12.* Nor did the employer dispute that the claimant had a major medical condition, anxiety, which was aggravated by these continuing working conditions. *See Consolidated Findings ## 7, 8, 9, 11, 12, and 23.* She experienced heart palpitations, trouble sleeping, panic attacks, and worrying about going to work. Consolidated Finding # 10. Because of this, she finally resigned on August 11, 2022. *See Consolidated Finding # 24.*

“[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 documented medical condition of anxiety and the fact that her symptoms were directly connected to working under prolonged, difficult, stressful conditions, the claimant has met her burden to show that she had urgent, compelling, and necessitous reasons to leave.

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 ‘reasonable means to preserve her employment’ as would indicate the claimant’s ‘desire and willingness to continue her 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).

The review examiner disqualified the claimant because she did not take a leave of absence or utilize the option to add a day off within her eight-day schedule instead of resigning. *See* Consolidated Finding # 16. First, we note that, to be eligible for benefits, a claimant is expected to make reasonable attempts to preserve her employment. She 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).

During the hearing, the claimant explained that, when she saw her medical doctor on August 10, 2022, the doctor advised her to stop working immediately. *See* Consolidated Findings ## 21–22.¹ A leave of absence would not have remedied the problem, because she would have had to return to the same difficult workload at the end of the leave. Consolidated Finding # 18.

The claimant could not ask for shorter work weeks, as these were not available. Consolidated Finding # 11. At the remand hearing, the parties agreed that adding a day off in the middle of an eight-day stretch was impractical for someone working the third shift, because it disrupted the person’s sleep schedule.² While it is true that the claimant volunteered for some overtime shifts in the last few months of her employment, the findings show that this, too, was due to the workload and pressure on the entire staff. *See* Consolidated Findings ## 13–15. Nothing in the record indicates that it was because the claimant’s anxiety had subsided.

¹ The claimant testified that her doctor used a form medical leave letter, which was readily available, but that she did not specifically advise the claimant to take a leave of absence. The doctor said that she just wanted the claimant to stop working. We have supplemented the findings of fact, as necessary, with unchallenged testimony from both the claimant and the employer. *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).

² The employer’s Stat Lab Manager testified that she was aware that the claimant was leaving due to the anxiety of the workload, that she tried to rearrange the schedule for the claimant, but that it was difficult to do without assigning this type of one day on and one day off.

As for transferring to another position, the employer's manager was asked about available job openings prior to the claimant's separation. She referred only to openings on the first and second shifts. The claimant explained that transferring to another shift was not financially feasible, as the loss of the third shift differential would have reduced her income by over \$18,000. *See Consolidated Finding # 2.*

In short, the record shows that there were no reasonable options to preserve her employment at the time. That she subsequently returned to work for the employer upon being given a different, newly created assignment with an easier workload indicates the claimant's desire and willingness to continue her employment with this employer. *See Consolidated Finding # 25.*

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she involuntarily resigned 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 August 11, 2022, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 25, 2023



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Maichael 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.