

Where the claimant's multiple sclerosis symptoms made it difficult to perform her duties, she demonstrated urgent, compelling, and necessitous reasons to resign. Given the medical evidence showing that she was unable to perform any sort of work, efforts to preserve her employment would have been futile. Held she is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

**Board of Review
100 Cambridge Street, Suite 400
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0078 2312 91

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 separated from her position with the employer on May 28, 2022. She filed a claim for unemployment benefits with the DUA, effective July 3, 2022, which was denied in a determination issued on October 13, 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 May 5, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left her employer without taking steps to preserve her employment, and thus, 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 left her employment for an urgent, compelling, or necessitous reason, but was not eligible because she did not make any attempts to preserve her employment, 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 worked full time as a nail technician for the employer, a nail salon, from February 1, 2022 until May 28, 2022.
2. During her employment, the claimant found out she has multiple sclerosis (MS) which causes her hands to swell so she cannot work.

3. The claimant did not tell the employer about her MS diagnosis.
4. The claimant had many medical appointments scheduled due to her diagnosis of MS.
5. The claimant's doctor advised the claimant to stop working.
6. On May 28, 2022, the claimant finished her shift, cleaned up her station and belongings, and told the manager she was resigning effective immediately. The claimant did not give the manager a reason for leaving her employment.
7. The claimant then went to the reception desk and told the receptionist to give her last paycheck to a co-worker who would deliver it to the claimant.
8. The claimant has been unable to work in any capacity since her diagnosis of MS due to swollen hands.
9. Since the claimant resigned from the employer, she has experienced a total paralysis from her head to her feet on the right side of her body which is ongoing.
10. The claimant takes medication by injection each day. The medication makes the claimant drowsy and causes her to sleep.
11. The claimant's doctor has not cleared her to work, even with restrictions or for light duty.
12. The claimant's job was not in jeopardy at the time she resigned.
13. The claimant did not request a leave of absence, transfer, reassignment, reduction in hours, or accommodations prior to resigning.
14. The employer would have accommodated the claimant for a reduction in hours, change of shift, or leave of absence if the claimant had requested [sic] same.

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 is ineligible for benefits.

Because the claimant quit her position, her eligibility for benefits is governed by 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.

By its terms, the statute specifies that the claimant bears the burden to show that she is eligible for unemployment benefits.

The record does not indicate that the claimant left her employment as a result of any action taken by the employer. We, therefore, need not consider whether the claimant had good cause for leaving attributable to the employing unit or its agent under G.L. c. 151A, § 25(e)(1).

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).

"[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, 412 Mass. at 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 MS, her inability to work in any capacity, and her doctor's advice to stop working, the claimant has demonstrated urgent, compelling, and necessitous reasons to leave her job. *See* Findings of Fact ## 4–5, and 8.

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 seek a leave of absence, transfer, reassignment, reduction in hours, or accommodations prior to her separation. *See* Finding of Fact # 13. 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).

Second, in this case, a leave of absence, transfer, reassignment, reduction in hours, or accommodations would not have enabled the claimant to preserve her employment. She continued working until the swelling in her hands made it too difficult to perform her tasks. *See* Finding of Fact # 2. The claimant could not ask for shorter work weeks or transfer to another position as this would not accommodate her medical needs. Her doctor would not clear her for light duty or working with restrictions. He advised her not to work at all. *See* Findings of Fact ## 5, 8, and 11. Given the ongoing nature of her disabling illness, she could also reasonably conclude that a leave of absence would not change anything. *See* Findings of Fact ## 8–11.

In short, the record shows that there were no reasonable options to preserve her employment at the time.

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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 15, 2022, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 31, 2024



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.

MM/rh