

**The claimant, who was diagnosed with multiple mental health disorders, had a mental health crisis that rendered her unable to speak, type, or communicate. Such was an urgent, compelling, and necessitous reason within the meaning of G.L. c. 151A, § 25(e)(1), for the consecutive no call no shows that resulted in her separation. The same symptoms that resulted in the claimant's separation also rendered her unable to take steps to preserve her employment. Held she is eligible for benefits.**

**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 6340 04**

### 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 November 18, 2022. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 22, 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 February 18, 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 remanded the case to the review examiner to obtain subsidiary findings of fact pertaining to the circumstances surrounding the claimant's separation. Thereafter, the review examiner issued his 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 separated from her employment for urgent, compelling, and necessitous reasons because she was a no call-no show for three consecutive days due to a medical condition but was not entitled to benefits because she had not taken reasonable steps 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 consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. The claimant was a full-time claims representative with the employer, an insurance company, from April 12, 2021, through November 18, 2022, when she separated from her employment.
2. The claimant's direct report was the claims team manager (manager).
3. The claimant took a medical leave of absence from approximately June 20, 2022, through approximately September 13, 2022, due to mental health issues.
4. The claimant's last physical day of employment was November 1, 2022.
5. On November 2, 2022, the claimant sent an email to the manager indicating she was unable to work due to her child being ill, to which the employer sent an email response acknowledging the claimant's inability to work.
6. On November 2, 2022, the claimant sent another email to the manager indicating a doctor would see her daughter on November 4, 2022.
7. On November 8, 2022, the manager sent an email to the claimant requesting information about returning to her employment.
8. On November 9, 2022, the claimant sent an email to the manager that she needed to remain out of work as her daughter would be re-evaluated on November 14, 2022.
9. The claimant's daughter did not need to be re-evaluated on November 14, 2022, as she started to feel better.
10. Beginning November 14, 2022, the claimant began to suffer from a mental health issue.
11. The claimant's symptoms included not being able to communicate verbally or write and type.
12. The claimant did not notify the employer about her inability to return to work beginning November 14, 2022.
13. The claimant was a no-call no-show for employment from November 14-November 18, 2022.
14. On November 15, 2022, the manager sent a letter by overnight mail, first class mail, [and] email to a personal and work email address, indicating that the claimant was expected to return to work on November 14, 2022, and she has not communicated with the employer. The letter indicated the claimant could contact the Human Resources Support Center for leave options and to

communicate by 12:00 p.m., November 18, 2022, and if not, may be subject to termination.

15. Beginning November 14, 2022, the claimant was not admitted to the hospital and did not have a physical appointment with a physician.
16. On approximately November 14, 2022, the claimant's mother assisted her in having the daughter go stay with her father.
17. On November 17, 2022, the claimant's mother assisted the claimant in setting up a telecommunication physician visit.
18. The claimant's mother was able to assist in setting up the telecommunication medical visit because she knew who the claimant's treating physician was at the time.
19. On November 17, 2022, the claimant had a phone call appointment with a physician.
20. The claimant did not contact the employer after the November 9, 2022, email.
21. The claimant did not request a leave of absence regarding November 14-18, 2022.
22. The claimant was aware the employer offered leave of absences [sic].
23. The claimant did not communicate with the employer from November 14-18, 2022, because her mental health issues at the time caused symptoms such as the inability to communicate verbally, as well as not being able to write or type information.
24. On November 18, 2022, the claimant separated from her employment by job abandonment when she was a no-call no-show from November 14-18, 2022, due to mental health issues.

#### Credibility Assessment:

During the original hearing, the claimant provided consistent and credible testimony that upon her mental health issues beginning on November 14, 2022, she was unable to communicate with anyone, including her employer, as her symptoms prevented her from being able to speak, type, or write. The claimant provided further credible testimony that even though she was unable to communicate, her mother began caring for her by arranging for the claimant's daughter to stay with her father, and by contacting the claimant's treating physician, whom she knew. As such, it is concluded the claimant provided credible and consistent testimony that her mental health issues prevented her from being able to contact her employer between November 14-18, 2022, to preserve her employment.

## 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. 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. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not entitled to benefits.

The review examiner's consolidated findings indicate that the claimant effectively abandoned her job after November 14, 2022. We, therefore, conclude that the claimant quit her job. Olechnicky v. Dir. of Division of Employment Security, 325 Mass. 660, 661 (1950) (upholding the Board of Review's conclusion that the failure of an employee to notify his employer of the reason for absence is tantamount to a voluntary leaving of employment within the meaning of G.L. c. 151A, § 25(e)(1)).

Where a claimant resigns from employment, we analyze the claimant's separation pursuant to the following provisions under G.L. c. 151A, §§ 25(e), which provide, 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 of such an urgent, compelling and necessitous nature as to make his separation involuntary.

Under the above provisions, it is the claimant's burden to establish that she left her job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

“[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). Here, the consolidated findings show that the claimant began experiencing a severe mental health crisis on or before November 14, 2022, that rendered her incapable of working or otherwise communicating with the employer for an extended period of time. Consolidated Findings ## 10–14, and 23. We are satisfied that this constituted an urgent, compelling, and necessitous reason for the series of no-call, no-shows that ultimately caused her separation. See Consolidated Finding # 24.

While the review examiner found that the claimant articulated urgent, compelling, and necessitous reasons for resigning, he concluded the claimant was not entitled to benefits because she had not taken reasonable steps to preserve her employment. We disagree.

The Board has previously held that where a claimant's altered mental state is so significant as to render the separation involuntary, such is also evidence that the claimant would not have been aware of or otherwise able to comply with any obligation to preserve his or her employment. *See* Board of Review Decision 0011 0939 51 (Feb. 24, 2015), *and* Board of Review Decision 0002 4280 21 (Feb. 13, 2014).<sup>1</sup> The consolidated findings here show the same severe psychological distress that caused the claimant's separation also rendered her unable to take steps to preserve her employment. *See* Consolidated Finding # 23. Therefore, we decline to disqualify the client on the grounds that she was unable to fulfill her obligation to preserve her employment, due to circumstances beyond her control, namely severe psychological distress.

We, therefore, conclude as a matter of law that the claimant left her employment involuntarily for urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning the week of November 20, 2022, and for subsequent weeks if otherwise eligible.

**N.B.:** The record indicates that the claimant had a medical condition that impaired her ability to work beginning on or around November 14, 2022. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits under the provisions of G.L. c. 151A, § 24(b).

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 30, 2023**



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:

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<sup>1</sup> Board of Review Decisions 0011 0939 51 and 0002 4280 21 are unpublished decisions, available upon request. For privacy reasons, identifying information is redacted.

[www.mass.gov/courts/court-info/courthouses](http://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.

LSW/rh