

**Claimant worked for a temporary staffing agency. She left her assignment without contacting the employer and requesting a new assignment. Since the employer advised the claimant in writing of her obligation to contact the employer to request a new assignment, following the ending of another, the claimant is deemed to have voluntarily quit. Because the claimant provided no evidence that she left her employment due to an employer action or for medical reasons, she failed to show she resigned from her employment for good cause attributable to the employer or urgent, compelling, and necessitous reasons. Held she is ineligible for benefits under G.L. c. 151A, § 25(e)(1).**

**Board of Review  
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**Issue ID: 0078 6897 88**

#### 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 reverse.

The claimant separated from her position with the employer on June 8, 2022. She reopened an existing claim for unemployment benefits with the DUA, which was effective November 21, 2021. In a determination issued on December 30, 2022, DUA denied benefits beginning June 24, 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 March 9, 2023. 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 take additional testimony regarding the reasons for the claimant's separation. Both parties attended the remand hearing. 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 left work involuntarily for urgent, compelling, and necessitous reasons due to on-going health issues, 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 as a part-time sorter for the instant employer's client (client A) between approximately August 23, 2021, and approximately February 1, 2022. The instant employer is a temporary staffing agency.
2. Upon beginning the relationship with the instant employer, the claimant signed paperwork indicating that she would need to contact the instant employer for future job assignments if an assignment ended.
3. The claimant's scheduled start time with client A was approximately 6:00 p.m.
4. On approximately February 1, 2022, the claimant informed the instant employer that she would not be returning to her employment with client A.
5. The claimant did not provide a reason for why she would not return to her employment.
6. Prior to quitting her employment with client A on February 1, 2022, the claimant did not raise any concerns with her employment to the instant employer or client A.
7. Prior to quitting her employment with client A on February 1, 2022, the claimant did not request new employment from the instant employer.
8. If the claimant did not quit her employment with client A, work was still available.
9. On February 4, 2022, the claimant called the instant employer and spoke to a staffing manager.
10. The claimant asked the staffing manager if there were third shift employment opportunities available but provided no further requests or information.
11. The staffing manager informed the claimant there were no third shift positions immediately available.
12. The claimant did not contact the instant employer following February 4, 2022.
13. The instant employer attempted to contact the claimant on April 12, 2022, to discuss employment opportunities, but received no response.
14. In early May 2022, the claimant visited an Urgent Care clinic with symptoms of nausea, vomiting, and dizziness.
15. The claimant was given nausea medication which resolved the nausea.

16. On May 9, 2022, the claimant went to the hospital emergency room with symptoms of nausea, vomiting, headaches, and dizziness.
17. The claimant was given an X-Ray that showed no abnormal signs, blood work that showed no abnormal signs, and intravenous fluids.
18. The claimant was discharged upon feeling better following the intravenous fluids and was instructed to contact her primary care giver or return to the emergency room if symptoms worsened.
19. The instant employer contacted the employer [sic] on approximately May 10, 2022, to inform the claimant about a job opportunity with a packaging company (employer B).
20. On approximately May 11, 2022, the claimant completed an interview with client B.
21. On May 16, 2022, the claimant began full-time employment with client B as a sorter, working from 8:00 a.m., through 4:30 p.m.
22. The claimant was a no call no show to her employment with client B on June 8, 2022.
23. The claimant did not return to her employment with client B following the no call no show on June 8, 2022.
24. The claimant did not inform client B or the instant employer that she was quitting her employment with client B.
25. Prior to quitting her employment with client B, the claimant did not raise any issues with her employment with client B or the instant employer.
26. The claimant did not contact the instant employer after she quit her employment with client B.
27. If the claimant did not quit her employment with client B, work was still available.

#### Credibility Assessment:

During the initial hearing, the claimant stated her final job assignment was with client A, but during the remand hearing, the owner testified it was with client B, which the claimant admitted.

Initially, the claimant cited medical issues for quitting client A in February, 2022, but the owner testified she quit without mentioning medical issues. The claimant later contacted the employer for new employment, contradicting her initial claims.

The claimant's medical documentation only dated from May, 2022, does not support her claim of medical issues in February. The owner's testimony was deemed more credible.

Following February 4, 2022, the claimant did not contact the employer, despite the owner's attempts. The claimant provided vague and inconsistent reasons for this lack of contact during the remand hearing.

The claimant accepted a new job with client B in May, 2022, but was a no show on June 8, 2022, citing medical issues without informing client B or the employer.

Despite opportunities, the claimant failed to provide medical documentation supporting her claims of medical issues leading to quitting both employments. Therefore, her testimony regarding quitting due to medical issues was not deemed credible.

### 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 is eligible for benefits.

Consolidated Findings ## 1, and 22–24, reflect that the claimant worked for the employer, a temporary staffing agency. Since the claimant worked for a temporary staffing agency, her eligibility for benefits must be analyzed under the following provision of G.L. c. 151A, § 25(e), which states, in pertinent part, as follows:

A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of an assignment.

In addition, the regulations found at 430 CMR 4.04(8) provide, in pertinent part, as follows:

(b) Unless the claimant satisfies the provisions of 430 CMR 4.04(8)(c), the commissioner shall determine that the claimant has voluntarily quit employment if:

1. the claimant was employed by a temporary help firm; and

2. the temporary help firm advised the claimant in writing as provided in 430 CMR 9.04(8)(e) of the need to contact the temporary help firm for reassignment upon completion of an assignment; and
3. the temporary help firm submits information, supported by contemporaneous documentation prepared in the ordinary course of business, that the claimant did not request another work assignment upon completion of the most recent assignment.

(c) The claimant may avoid the commissioner's determination in 430 CMR 4.04(8)(b) above if the claimant shows that he/she:

1. did request another assignment; or
2. did not receive written notice from the temporary help firm of the obligation to request another assignment; or
3. had good cause, as determined by the commissioner, for failing to request another assignment.

The Board has interpreted this contact provision of the statute to require communication between the employer and the claimant at or near the end of an assignment, so that the employer has an opportunity to tender a timely offer of a new assignment to the claimant and, thus, avoid the claimant's unemployment. *See, e.g.*, Board of Review Decision 0031 1199 07 (Oct. 30, 2019).

For the purposes of our analysis, the claimant's separation from client A is not relevant to our decision. Our focus is on the claimant's separation from client B, and whether she meets the eligibility requirements pursuant to G.L. c. 151A, § 25(e).

Here, the review examiner found that the claimant was provided with written instructions to contact the employer upon the end of any assignment. Consolidated Finding # 2. He also found that the claimant did not contact the employer after she quit her assignment with client B. Consolidated Findings ## 24 and 26. Furthermore, the claimant has not presented any reasons for her failure to request an assignment. On the record before us, there is no indication that the employer was aware that the claimant ended her assignment. Consequently, the employer was not afforded the opportunity to timely offer the claimant a new assignment and, thus, avoid her unemployment. Therefore, the claimant is deemed to have voluntarily quit her employment with the temporary staffing agency.

In as much as we have determined that she resigned from her employment, we consider whether she is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1). The claimant alleges that she quit her employment for medical reasons.

G.L. c. 151A, § 25(e), 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 explicit language in § 25(e)(1) places the burden of proof on the claimant.

Because nothing in the record suggests that her reason for leaving had anything to do with the employer's actions, the claimant has not shown that she resigned for good cause attributable to the employer. *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (to decide good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving).

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 suffered from nausea, vomiting, and dizziness in May of 2022. Consolidated Findings ## 14 and 16. However, the findings reflect that the claimant's symptoms were resolved. Consolidated Findings ## 15 and 18. Nothing in the record indicates that the claimant suffered from the same or other medical conditions in June of 2022, when she resigned from her employment. Because there is no such evidence, the review examiner reasonably rejected her assertion that she stopped working in June due to medical issues as not being credible. As such, the record does not show she left her employment for urgent, compelling, and necessitous reasons.

Even assuming, *arguendo*, that the claimant had shown that she left her employment for urgent, compelling, and necessitous reasons, she had failed to take reasonable steps to preserve her employment as required under G.L. c. 151A § 25(e)(1). "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).

We, therefore, conclude as a matter of law that the claimant voluntarily left her employment. We further conclude that she did not establish that she left work either for good cause attributable to the employer or for urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending June 11, 2022, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 30, 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](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.

DY/rh