

Where the claimant's domestic responsibilities to ill family members made it difficult to perform her duties, she demonstrated urgent, compelling, and necessitous reasons to resign. The claimant took reasonable steps to preserve her employment when she shared her problems with the employer. She is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0078 8680 30

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 October 28, 2022. She filed a claim for unemployment benefits with the DUA, effective December 18, 2022, which was approved in a determination issued on March 4, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on June 15, 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 give the claimant an opportunity to testify and present other evidence. 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 original 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 claimant was struggling with several family illness issues at once.

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 full-time for the employer as an Instructional Aide from 10/10/17 through 10/14/22.
2. In the summer of 2022, the claimant cared for her mother while she was an inpatient in the hospital. The claimant's mother suffered from breast cancer, and her condition was poor. She was receiving radiation treatment.
3. The claimant also cares for her two children and her elderly father who suffers from C.O.P.D. and hearing loss.
4. The claimant and her sister had to take turns caring for both of their parents and make multiple critical decisions throughout the weeks her mother was in the hospital.
5. For instance, the claimant had to line up a full-time nurse to care for her mother and her oxygen machine needs upon discharge from the hospital.
6. The claimant became very stressed out as she tried to juggle her family life with her work and caring for her ill parents.
7. The claimant was very sad about her mother's medical condition because she was very touch and go and the claimant felt overwhelmed each day.
8. The claimant used her sick time as necessary.
9. In or around October 2022, the claimant's teenage son was injured when his foot was run over by a car.
10. In early October 2022, the claimant submitted a letter of resignation to her employer indicating she was leaving for personal reasons to care for her family and her home. She mentioned her son's recent injury in her letter.
11. The claimant's last physical day of work was October 14, 2022. She was paid sick time through 10/28/22.
12. The claimant quit her job because she was overwhelmed with working full-time while dealing with her family issues including her son's recent foot injury, her father's medical issues related to his C.O.P.D. diagnosis and hearing loss, and her mother's cancer diagnosis, hospitalization, and subsequent need for care.
13. Around the time of her resignation, the claimant spoke with an Assistant Principal about her family issues, but no leave of absence was offered to her.
14. The Assistant Principal told the Principal of the school about the claimant and her issues.

15. The Principal was in charge of leave of absence paperwork for employees of the school. The Principal did not offer the claimant a leave of absence. He believed the claimant would need too much time off to qualify for a leave based upon the information he received from the Assistant Principal.
16. The claimant did not specifically ask for a leave of absence because she believed that since she was not in the teacher's union, she was not eligible for one. She also wasn't really thinking clearly at the time and just needed to concentrate on caring for her family.
17. In November 2022, the claimant's mother was able to leave the hospital.
18. Around the same time, the claimant obtained new full-time work with a new employer.
19. On 12/25/22, the claimant filed this unemployment claim which was effective 12/18/22. The claimant filed the claim after she was laid off by her new employer.

Credibility Assessment:

The claimant's testimony about her reasons for resigning from her position was very credible. She provided sincere and detailed testimony in the hearing that supported the fact she was overwhelmed with caring for her family and ill parents while working full-time for the employer. Prior to resigning, the claimant attempted to preserve her job by speaking with the Assistant Principal about her issues.

The Principal's testimony was also credible. He explained he was aware of the claimant's family matters through a discussion with the Assistant Principal but was under the impression that she needed a very lengthy time off period and believed she would not qualify for a leave of absence so one was not offered to her.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We set aside the portions of Consolidated Findings ## 14–15 and the Credibility Assessment that refer to the Principal, as the employer's testimony makes clear that this was the Assistant Superintendent.¹ 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

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).

assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's original legal conclusion that the claimant is not entitled to 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). Additionally, "[since] domestic responsibilities can entitle a claimant to reject certain employment situations as unacceptable and restrict her work availability under § 24(b), we conclude that these same responsibilities also may constitute urgent and compelling reasons which make a resignation involuntary under G.L. c. 151A, § 25(e)(1)." Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (child care demands may constitute urgent and compelling circumstances) (citations omitted).

Here, the claimant resigned because she was stressed and overwhelmed while working full-time and dealing with multiple, serious family issues, including caring for her son, who had injured his foot, caring for her father, who had C.O.P.D. and hearing loss, and caring for her mother, who was hospitalized and receiving treatment for cancer. Consolidated Findings ## 3–7, and 12. Given

that the claimant's mental health was being adversely affected while trying to juggle working full-time and caring for multiple ill family members, the claimant has demonstrated urgent, compelling, and necessitous reasons to leave her job.

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).

Here, the claimant spoke to the employer about the multiple issues that she was having at home, but the employer did not offer her a leave of absence or other accommodation. Consolidated Finding # 13. The claimant did not specifically ask for a leave of absence because she did not think that she was eligible to take a leave in her job position. Consolidated Finding # 16. We believe that the claimant made a reasonable attempt to preserve her employment when she informed the employer of the issues that were affecting her availability for work. It is not required that a claimant request a leave of absence to establish that she made a reasonable attempt to preserve her employment. *See Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 94 (1984).

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 October 30, 2022, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - July 29, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, 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.

SVL/rh