

**The claimant, who has a 20-year history of depression, was suffering from a major depressive episode and several severe physical ailments and, thus, did not have the physical or mental capacity to take reasonable steps to preserve her employment. Held her separation from employment was involuntary due to urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e).**

**Board of Review  
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**Issue ID: 0079 4356 00**

### 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 January 27, 2023. She filed a claim for unemployment benefits with the DUA, effective March 5, 2023, which was denied in a determination issued on March 23, 2023. 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 July 7, 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). 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 without taking reasonable steps to preserve her job, is supported by substantial and credible evidence and is free from error of law, where the record shows that the claimant had severe mental illness and other medical conditions at the time that she stopped reporting her absences to the employer.

### Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. Prior to filing for benefits, the claimant worked as a telecommunications operator for the employer, a hospital. The claimant began working for the employer on 10/15/2012. She worked a full-time schedule, forty hours over five days, and earned \$17.68 per hour.

2. The claimant's supervisor was the employer's telecommunications manager.
3. The claimant has a twenty-year medical history of depression. The claimant was followed by her primary care physician for her symptoms.
4. In or about 2019, the claimant stopped seeking treatment and taking medication for her depression.
5. The claimant did not advise the employer of her medical condition.
6. The employer has an attendance policy prohibiting excessive [absences] from work (Policy). The Policy states "Except in unusual circumstances, a colleague who is absent from work and does not notify his/her manager for three (3) consecutively scheduled workdays, will be considered to have voluntarily terminated employment...".
7. The purpose of the Policy is to ensure consistent adherence to employee's work schedule to provide quality patient care to the employer's patients.
8. The claimant was admittedly aware of the Policy, having received a copy of the Policy.
9. Beginning on 1/13/2021, and throughout her employment, the employer gave the claimant numerous warnings and coaching for attendance.
10. On 10/15/2021, the employer gave the claimant a Final Written Warning for attendance.
11. On 5/5/2022, the supervisor met with the claimant and advised the claimant that she "could be eligible for an intermittent leave of absence that would protect [the claimant's] absences from further corrective action" and provided the claimant with information [on] how to request such a leave of absence. The meeting was recounted in an email sent by the supervisor to the claimant on 5/9/2022.
12. The claimant failed to request an intermittent leave of absence.
13. On 8/17/2022, the supervisor met with the claimant and advised the claimant that she was still not meeting the attendance expectations of the employer.
14. On 8/18/2022, the supervisor gave the claimant a Final Written Warning – addendum for attendance, stating, "Continued failure to meet the expectations of your employment ... will be considered grounds for additional corrective action up to and including the termination of your employment," which the claimant signed on 8/18/2022.

15. The claimant's first day out of work was 1/4/2023.
16. Beginning on or about 1/4/2023, the claimant believed she had symptoms indicative of the [COVID]-19 virus, including fatigue, muscle and body aches, headaches, and congestion.
17. Beginning on 1/4/2023, and through 1/20/2023, the claimant contacted a coworker, stating that she was ill and unable to work.
18. On 1/4/2023, 1/5/2023, 1/11/2023, 1/13/2023, 1/18/2023, 1/19/2023, and 1/20/2023, the claimant sent messages via a social media account to the coworker stating that she was sick and not able to come into work.
19. The claimant had no further contact with the employer following 1/20/2023.
20. During the week beginning on or about 1/23/2023, the claimant experienced a major depressive episode, resulting in the claimant not leaving her bed and becoming increasingly lethargic and weak.
21. During the week beginning 1/23/2023, the claimant did not answer her telephone.
22. The claimant was scheduled to work on 1/25/2023, 1/26/2023, and 1/27/2023.
23. On 1/25/2023, 1/26/2023, and 1/27/2023, the claimant did not work and failed to contact the employer.
24. On 1/4/2023, 1/5/2023, 1/11/2023, 1/12/2023, 1/19/2023, 1/20/2023, 1/25/2023, 1/26/2023, and 1/27/2023, the supervisor reached out to the claimant. The claimant did not respond to the employer's calls.
25. On 1/27/2023, the employer separated the claimant from employment as a voluntary quit pursuant to the employer's Policy.
26. On 2/7/2023, the claimant's coworker called the local police department to perform a wellness check. The claimant was transported to the hospital.
27. Beginning on 2/7/2023, and through 2/22/2023, the claimant was hospitalized for "failure to thrive as an adult, infection, pressure ulcers, and chronic osteomyelitis of left distal phalanx". During the hospitalization, the claimant tested positive for the [COVID]-19 virus.
28. On 2/22/2023, the claimant was discharged to a rehabilitation facility for further treatment.
29. The claimant was released from the rehabilitation facility on 4/7/2023.

30. On 3/23/2023, the Department of Unemployment Assistance (DUA) issued a Notice of Disqualification to the claimant. The claimant appealed that determination.

### 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's failure to take reasonable steps to preserve her employment is disqualifying.

Finding of Fact # 25 provides that the employer ended the claimant's employment, treating it as a voluntary quit. Because the claimant had stopped reporting for work or communicating with the employer, we agree that this was a resignation for purposes of unemployment eligibility. Olechnick 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)).

As the claimant resigned her position, her eligibility for benefits is properly analyzed under the following provisions under G.L. c. 151A, § 25(e), which state, 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 express language of these provisions places the burden of proof upon the claimant.

The claimant separated from her position with the employer when she was unable to report to work in January, 2023, due to various medical conditions, including a COVID-19 infection and a major depressive episode that rendered her unable to leave her bed or eat.<sup>1</sup> See Findings of Fact ## 16, 20 and 27. As she did not choose to quit because of any decision made or action taken by the employer, we need not consider whether she resigned for good cause attributable to the employer.

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<sup>1</sup> 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).

We next consider whether the claimant showed that she separated from her position with the employer 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 claimant stopped reporting for work due to illness on January 4, 2023. *See* Findings of Fact ## 15 and 17. Specifically, on or about January 4<sup>th</sup>, the claimant began experiencing symptoms of a COVID-19 infection, including fatigue, body aches, headache, and congestion. *See* Finding of Fact # 16. Her condition worsened as she began experiencing a major depressive episode that rendered her unable to leave her bed or eat, which in turn made her increasingly lethargic and weak. *See* Finding of Fact # 20. The claimant has had depression for 20 years and has been diagnosed with major depressive disorder. *See* Finding of Fact # 3 and Exhibit 6.<sup>2</sup>

Upon receiving medical treatment after a coworker called the police for a wellness check on February 7, 2023, the claimant was diagnosed with other medical conditions, including anxiety disorder, several pressure ulcers and muscle wasting and atrophy. *See* Findings of Fact ## 26–27 and Exhibit 6. The claimant was hospitalized between February 7, 2023, and February 22, 2023, at which time she entered a rehabilitation center where she received treatment through April 7, 2023. *See* Findings of Fact ## 27–29. Given these findings and documented medical conditions, we are satisfied that the claimant’s medical issues constituted an urgent, compelling, and necessitous reason that caused her continued absence from work and ultimate separation from the employer.

However, our inquiry does not end there. To qualify for benefits, a claimant who resigns from employment must also show that she 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, 597–598 (1974). To satisfy the reasonable preservation requirement, a claimant does not have to establish that she had no choice but to resign, merely that her actions were reasonable. Norfolk County Retirement System, 66 Mass. App. Ct. at 766. Thus, the Board has held that, prior to separating from employment, a claimant must pursue a feasible course of action, which would enable her to remain employed. *See, e.g.,* Board of Review Decision 0014 8749 27 (Feb. 17, 2016).<sup>3</sup>

Here, the findings show that the claimant made some effort to preserve her employment, as she contacted her coworker to report her absences through January 20, 2023. *See* Finding of Fact # 18. However, she failed to report her absences directly to the employer or seek an intermittent leave of absence, as the employer suggested. Although it is not required to request a leave of absence to show a reasonable attempt to preserve employment, we agree that requesting such a

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<sup>2</sup> Exhibit 6 includes discharge records from her medical providers. This is also part of the unchallenged evidence in the record.

<sup>3</sup> Board of Review Decision 0014 8749 27 is an unpublished decision, available upon request. For privacy reasons, identifying information has been redacted.

leave here would have been a reasonable step to help the claimant keep her job after her condition did not improve.

That said, we have also previously held that where a claimant's altered mental state significantly impairs her ability to make a rational decision about quitting, the claimant not only may urgent, compelling, and necessitous reasons to resign, but may also not have been aware or rationally able to comply with any obligation to preserve her employment. *See* Board of Review Decisions 0011 0939 51 (February 24, 2015), and 0002 4280 21 (February 13, 2014).<sup>4</sup> Here, the findings show that it was only when the claimant's condition worsened to the point that she was not even capable of seeking life-saving medical treatment for herself that she ceased all efforts to reach the employer. *See* Findings of Fact ## 19–21, 26.

The above findings of fact and the totality of the evidence reflect that the claimant was experiencing such severe psychological and physical distress that it altered her mental state and rendered her unable to make a rational decision regarding job preservation at the time of her separation in late January, 2023. In fact, given the claimant's long history of depression and the COVID-related symptoms she was experiencing, we can reasonably infer that the claimant's capacity to take steps to preserve her employment was at least partially diminished as early as January 4, 2023, particularly where she reported her absences to a coworker and did not think to make contact with her supervisor to discuss her options. Under these circumstances, the claimant has shown that she was unable to make reasonable efforts to preserve her employment.

We, therefore, conclude as a matter of law that the claimant involuntarily left her employment 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 for the period beginning March 5, 2023, and for subsequent weeks. if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 28, 2024**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Michael 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)**

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<sup>4</sup> Board of Review Decisions 0011 0939 51 and 0002 4280 21 are also unpublished decisions, available upon request.

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.

SVL/rh