

The claimant's unexpected lack of childcare for the Thursday night meetings that she was required to attend constituted urgent, compelling, and necessitous reasons for resigning. However, she did not inform the employer of the reason for her resignation or request any accommodations prior to resigning. As there was evidence that she could have attended the meetings remotely or sought other accommodations, she did not take reasonable steps to preserve her employment. She is ineligible for benefits pursuant to G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0079 6321 64

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 December 16, 2022. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on July 20, 2023. The employer 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 awarded benefits in a decision rendered on August 29, 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. 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 resigned for urgent, compelling, and necessitous reasons, because she was unable to complete a requirement of her job due to a lack of childcare and made reasonable 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 as a part time clerical assistant for the employer, a municipality, from April 4, 2022, until December 16, 2022, when she separated.

2. The claimant's supervisor was the building commissioner.
3. The claimant worked Mondays and Tuesdays, 8:30 a.m. to 3:30 p.m., and Wednesdays, Thursdays, and Fridays, 8:30 a.m. to 12:30 p.m.
4. Upon starting her job, the claimant was advised by the other clerical assistant in her department (employee A), that as part of her job duties, she would be required to work on Thursday evenings, whenever the Zoning Board of Appeals (ZBA) had scheduled meetings. The claimant was required to be at the Thursday evening ZBA meetings beginning at 6:30 p.m. and until the meeting ended, anywhere between 7:30 p.m. and 9:30 p.m. Employee A attended the first two meetings with the claimant after her employment began, and thereafter the claimant attended all ZBA meetings on Thursday evenings.
5. The claimant has two children, ages 5 and 6 years.
6. The claimant's husband worked the first shift, 7:00 a.m. to 3:00 p.m., and provided childcare for the claimant's children whenever the claimant was required to work on Thursday evenings.
7. On or about November 28, 2022, the claimant's husband was informed that his shift would be changing in December 2022 from first shift to second shift, and his hours would be from 3:00 p.m. to 11:00 p.m.
8. The claimant's husband's shift change would prevent the claimant's husband from being available for childcare on Thursday evenings.
9. The claimant contacted the children's grandparents to ask them to watch the claimant's children on Thursday evenings. The grandparents are in their late 70s. The grandparents could not provide childcare for the claimant's children on Thursday evenings because the hours were too late in the evening.
10. The claimant did not have any other relatives or friends who were available to provide childcare on Thursday evenings.
11. On November 29, 2022, the claimant resigned from her employment because she did not have childcare for her children on Thursday evenings.
12. The claimant did not inquire about an accommodation for Thursday evenings before she resigned because she believed it would not be granted as it was a requirement of her job.
13. The claimant did not inquire about a leave of absence before she resigned because she did not believe she would qualify for same due to her part time 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 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 entitled to benefits.

As the claimant resigned her position with the employer, her eligibility for benefits is properly analyzed under the following provisions in 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 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 resigned her position because of unexpected issues with childcare, not as a result of any decision made or action taken by the employer. Finding of Fact # 11. As such, we need not consider whether the claimant resigned for good cause attributable to the employer.

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). Domestic responsibilities, such as the need to provide care for a family member, may be sufficient to show such urgent and compelling circumstances as to render a claimant’s separation involuntary. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted).

Shortly after the claimant started her job, the employer’s other clerical assistant informed her that it was her responsibility to attend the Thursday night meetings of the Zoning Board of Appeals (Zoning Board). Finding of Fact # 4. The claimant’s husband was able to watch their children on Thursday evenings until his employer transferred him to the 3:00 p.m. to 11:00 p.m. shift in December, 2022. Findings of Fact ## 7 and 8. As the claimant was unable to secure any alternative childcare for Thursday evenings, we believe that she presented urgent, compelling, and necessitous reasons for resigning. *See* Findings of Fact ## 8–10.

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). Consistent with this precedent, 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).¹

In her original decision, the review examiner concluded that the claimant’s efforts to secure alternative childcare were sufficient to show she had taken reasonable steps to preserve her employment. We disagree.

While not incorporated in the review examiner’s findings of fact, it was undisputed that the claimant did not inform the employer of her childcare issues or make any requests for accommodations prior to resigning.² The claimant explained that she did not inform the employer of her childcare issues or request any accommodations because she believed that the employer would not grant any such request. See Finding of Fact # 12. Without evidence to support her belief, the claimant has not met her burden to show that her belief was reasonable. Moreover, contrary to her contention in this regard, the claimant conceded that she inquired into the feasibility of a transfer to a different position *after* submitting her resignation. The claimant’s willingness to make this request directly detracts from a conclusion that, at the time she resigned, the claimant reasonably believed any further attempt to preserve her employment would have been futile.

Additionally, the employer’s witness explained that the claimant likely could have worked remotely on Thursday nights because the Zoning Board meetings were often conducted virtually. As the claimant had been attending the Zoning Board meetings for several months prior to resigning, we can reasonably infer that she would have been aware the employer had this capability. See Finding of Fact # 4. This record fails to show that she took reasonable steps to preserve her employment or otherwise reasonably believed any such efforts would have been futile.

We, therefore, conclude as a matter of law that the claimant left her employment for urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, § 25(e). However, we further conclude that she did not meet her burden to show that she took reasonable steps to preserve her employment before quitting.

The review examiner’s decision is reversed. The claimant is denied benefits for the week of March 26, 2023, 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.

¹ Board of Review Decision 0014 8749 27 is an unpublished decision, available upon request. For privacy reasons, identifying information has been redacted.

² This portion of the claimant’s testimony, as well as the portions of the claimant’s and employer’s testimony referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to in our decision today. 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 5, 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:
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