

The claimant resigned her position for urgent, compelling, and necessitous reasons because she was diagnosed with PTSD and anxiety after being threatened and assaulted by a student at the employer's school. Her doctor would not clear her to return to work unless she felt safe in the workplace. As the claimant still felt unsafe in the workplace after addressing her safety concerns with the employer, she reasonably believed any further steps to preserve her employment would have been futile. Held she is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

**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: 0079 8191 43

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 March 10, 2023. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on May 18, 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 July 14, 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 additional evidence pertaining to the reason the claimant chose to resign. 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 decision, which concluded that the claimant teacher did not show that she resigned for good cause attributable to the employer or for urgent, compelling, and necessitous reasons following an incident with a student, 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 full-time teacher for the employer, a public school system, from 1996 until March 10, 2023, when [she] separated.
2. The claimant's immediate supervisor was the principal of her school.
3. The claimant is certified to teach high school and specializes in trauma sensitive and crisis prevention intervention.
4. The faculty and staff recently had a meeting where it was discussed the school was having a problem with students wearing hoods and hats in the school. The faculty and staff were directed not to allow the students to wear hoods or hats while in the school.
5. On December 14, 2022, the claimant was in the hallway while students were filing through the halls to their classes.
6. The claimant saw a student wearing a hood and informed the student he had to take off his hood.
7. The student was large in stature and known to the faculty and staff to be very dangerous and volatile.
8. The student replied to the claimant, "Fuck you."
9. The claimant informed the assistant principal in the area that she had a huge problem, referring to the student, and the assistant principal stated, "Yup, you do," and walked away.
10. The rest of the students filed into their classrooms to begin their classes.
11. The claimant asked the student to sit down at a table in the area to discuss and explain to him the reason why he had to take off his hood. The claimant was standing on one side of the table while the student was seated on the other side of the table.
12. During their conversation, the student was gesturing towards the claimant and making movements like he was going to come over the table at the claimant.
13. The student was being loud and yelling at the claimant.
14. The student threatened and verbally assaulted the claimant, stating that he was a gang member, that he was going to "kick her head off and use her brains as a soccer ball," "you know that I can carry through with these threats," and informed her that his brother was just killed.

15. The student was pushing on the table (which was on wheels) multiple times causing the table the claimant and the student were sitting at to move down the hall from his continued pushes on the table in the claimant's direction.
16. Two (2) teachers came out of their classrooms to see what was happening because of the disturbance the interaction created. Both teachers called down to the office on their walkie talkies to report the claimant needed help, which was a "SOS" call. Both teachers returned to their classrooms.
17. Minutes later, another teacher opened their classroom door to see what was happening. That teacher used the phone to call to the office and report that the claimant was in need of help dealing with the student.
18. Twenty-one (21) minutes after the interaction started, the claimant received help from faculty and staff from the main office.
19. The employer began an investigation into the incident.
20. After the incident, [sic] went home and was unable to get out of her bed for two (2) weeks because she was traumatized and "scared to death" from the incident. The fear the interaction caused her was debilitating to the claimant.
21. The claimant saw her doctor and her therapist regarding the interaction.
22. The claimant was diagnosed with general anxiety disorder from post-traumatic stress disorder as a result of the incident with the student.
23. The claimant was on a leave from work due to her medical issues.
24. The claimant felt unsafe at her workplace. The claimant asked the school on several occasions if they were making any change[s] to the current protocols for safety concerns at the school to eliminate the claimant's fear of a reoccurring incident.
25. The claimant's doctor informed the claimant that she should not return to her work if she felt unsafe there because she would not be able to move past and heal from her PTSD if she returned to the workplace she did not feel safe in after the incident.
26. The claimant provided several notes from her doctors informing her employer that she was not able to return to work based on her diagnosis and she would be reevaluated in following weeks.
27. The claimant was in contact with and had personally informed the superintendent regarding her leave from work and the incident regarding the student.

28. As of February 16, 2023, the claimant was not cleared to return to work by her doctor's [sic].
29. On February 16, 2023, the claimant submitted a notice of resignation form to the employer stating that she was resigning effective March 10, 2023.
30. The claimant did not include the reason for her resignation on the resignation because the superintendent was aware of the circumstances based on their prior communications.
31. The claimant's last day of employment was March 10, 2023.

Credibility Assessment:

The claimant's and the employer's witness, the associate director of human resources, testimony is deemed to be credible. The claimant presented detailed forthcoming testimony during the remand hearing and the associate director provided forthcoming and consistent testimony in the remand hearing as she did in the original hearing. There is nothing in the record to suggest that any of the claimant's or the associate director's testimony was not 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 original legal conclusion that the claimant is not entitled to benefits.

As the claimant resigned her position with the employer, 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 resigned her position because she was not medically cleared to return to work following an incident involving a student at the employer's school. *See Consolidated Findings ## 25, 28, and 29.* 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.

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 consolidated findings show that the claimant had to take an indefinite medical leave of absence because she began experiencing a severe mental health crisis after being assaulted by a student at her workplace. *See Consolidated Findings ## 20–23.* While she underwent treatment for several months and engaged with the employer in an effort to address her safety concerns, her doctor would not medically clear her to return in light of her ongoing fear. *See Consolidated Findings ## 24–28.* Given these findings, we are satisfied that the claimant’s medical issues constituted an urgent, compelling, and necessitous reason for her decision to resign.

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; she merely needs to show 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).¹

As the claimant was only certified to teach at a high school level, she would not have been able to transfer to a teaching position at a different grade level. *See Consolidated Finding # 3.* She did consider the feasibility of requesting a transfer to a teaching position at the employer’s other high school, but ultimately concluded she would not feel safe working at that location as she was aware of reports that teachers at the school had also been assaulted by students in the recent past.² We believe that the claimant reasonably concluded that a transfer to a position at the employer’s other high school posed the same risk to her mental health as returning to her previous position. *See*

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

² The claimant’s uncontested testimony in this regard is part of the unchallenged evidence introduced at the hearing and placed in the record and is 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).

Consolidated Finding # 25. As there is no evidence that the claimant failed to pursue other feasible options which may have enabled her to remain employed, the claimant has met her burden to show that she reasonably concluded further steps to preserve her employment would have been futile.

We, therefore, conclude as a matter of law that the claimant resigned due to an urgent, compelling, and necessitous reason within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits beginning the week of April 2, 2023, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 22, 2023



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)**

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