Although the claimant established that an unreasonably long commute to her per diem job constituted urgent, compelling, and necessitous circumstances, she failed to make any efforts to preserve her employment before leaving. Therefore, she is disqualified from receiving benefits under G.L. c. 151A, § 25(e)(1).

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 9904 99

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 affirm.

The claimant resigned from her position with the employer and filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on May 5, 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 10, 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 afford the claimant an opportunity to testify. 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 quit 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 consolidated findings after remand provide that the claimant's commute was four hours each way to and from the employer's client service locations, and the claimant resigned for this reason.

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 *per diem* as a caregiver for the employer, a non-medical homecare agency, from February 7, 2023, until April 18, 2023.

2. The claimant earned a variable pay rate between $17.50 and $19.00 per hour.

3. The claimant's supervisor was the director of client care.

4. During the claimant's employment, the claimant lived in [City A], Rhode Island. The claimant's daughter lived in [City B], Massachusetts.

5. The employer operated in [City C] area and northwest of [City C].

6. The claimant did not tell the employer that she was living in Rhode Island.

7. The employer hired the claimant believing that she was living in the [City C] area.

8. At the start of the claimant's employment, the claimant anticipated that she would move in with her daughter in [City B].

9. On March 27, 2023, the claimant told the employer that she was moving to [City B] indefinitely.

10. In approximately early April 2023, the claimant "fell out" with her daughter following an argument.

11. The claimant was assigned to work at client homes in [City D] and [City E], Massachusetts during the course of her employment. The claimant's assignments were generally for three hours of work.

12. The claimant's commute included a bus route from [City A] to [City F], Rhode Island, a commuter rail from [City F] to [Location A] in [City C], transportation to [Location B] in [City C], a commuter rail to [City D] or [City E], and a rideshare service to the clients' homes. The claimant's total commute was approximately 4 hours each way and cost approximately $63.00 per day.

13. The employer did not change the requirements of the claimant's job position.

14. The claimant was not required to accept assignments in [City D] and [City E].

15. During the claimant's employment, the claimant accepted shifts in [City D] and [City E] because she felt that the employer needed her to cover the shifts and because she did not calculate the cost of her commute against her pay.

16. On April 12, 2023, the claimant gave two weeks' notice to the employer that she was quitting due to the commute.

17. On April 18, 2023, the claimant stopped working before the conclusion of her notice period because she thought April 18 was the end of her notice period.

18. The claimant was not at risk of being fired.

19. The employer had work available for the claimant.

Credibility Assessment:

The remand hearing was held in person. The claimant attended the remand hearing. Two owners attended the remand hearing on behalf of the employer. The claimant did not attend the initial hearing. The claimant credibly testified that she lived in [City A], Rhode Island during her employment. The claimant testified that she had accepted employment with the employer because she anticipated moving in with her daughter. The claimant provided receipts showing her commute costs. The claimant's testimony that her commute cost more than her wages is credible. The claimant's testimony that she did not calculate her commute cost earlier is 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact, except that portion of Finding of Fact #11, which states the claimant's assignments were generally for three hours of work. During the remand hearing, the claimant testified, and the employer did not refute, that she had worked for the employer twice a week, in shifts beginning 8:30 p.m. through 6:00 a.m. (8.5 hours) or beginning 9:00 p.m. through 6:00 a.m. (9 hours). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We also believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed in greater detail, below, we agree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Since it is undisputed that the claimant resigned from her position with the employer, her separation is 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 . . . .
>
> An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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.

Under the foregoing provisions, the claimant has the burden of showing that she left employment for good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

When a claimant contends that the separation was for good cause attributable to the employer, the focus is on the employer's conduct and not on the employee's personal reasons for leaving. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Here, the claimant has not alleged that she resigned due to the employer's conduct towards her. There is also nothing in the record to suggest that the employer ever acted unreasonably towards the claimant, or that it engaged in any type of conduct that could constitute good cause for the claimant to leave her employment.

Instead, the claimant maintained that she quit her position after two months because her lengthy commute had become too difficult and financially burdensome. *See* Consolidated Findings of Fact ## 12 and 16.

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 (1991). "[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. The requisite assessment is whether the claimant reasonably believed that she left her job for compelling reasons. Norfolk County Retirement System, 66 Mass. App. Ct. at 766 (further citation omitted).

As such, we consider whether the claimant's transportation reasons for leaving her job were so compelling as to make her departure involuntary. Although the consolidated findings establish that the claimant failed to disclose that she lived in the state of Rhode Island when she accepted assignments in [City D], [City E], and [City G], MA, we conclude that they were. *See* Consolidated Findings ## 6–7, and 11. The claimant had anticipated moving to [City B], MA, but relocating there was no longer a viable option in April, 2023. Consolidated Findings ## 8–10. To reach her assignments, the claimant relied on public transportation such as bus, rail and rideshare services, which resulted in a several hours-long commute for each shift. *See* Consolidated Finding # 12. A commute of this length can be reasonably viewed as unduly burdensome. Thus, the claimant's circumstances may have created an urgent, compelling, and necessitous reason to resign.

However, to be eligible for benefits, a claimant must also show that she made reasonable efforts to preserve her employment prior to resigning, or that such attempts would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984); Norfolk County Retirement System, 66 Mass. App. Ct. at 766. Here, the claimant did not inform the employer that she lived in [City A], RI. Consolidated Finding # 6. Although the claimant's commute was becoming increasingly difficult for her, there is insufficient information in the record to show that the claimant ever raised her commuting concerns with the employer, or that she ever asked to be

transferred to other, closer client locations. Only when she resigned on April 12, 2023, did the claimant inform the employer that she could not work due to the difficult commute. *See* Consolidated Finding # 16. As a result, the employer did not have an opportunity to consider and discuss with the claimant any potential means of addressing her concerns. There is also nothing in the record showing that any attempt to resolve the claimant's commuting concerns would have been futile. Because the employer did not require the claimant to accept assignments in [City D] and [City E], it is reasonable to infer that assignments in other locations were available to her. *See* Consolidated Findings ## 5, 14, and 19.

We, therefore, conclude as a matter of law that the claimant is not eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1), because she failed to make reasonable efforts to preserve her employment before resigning.

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning 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.



BOSTON, MASSACHUSETTS
DATE OF DECISION - January 9, 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

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.

JMO/rh