The claimant quit because the employer issued him a written warning for a scheduling infraction and talking too loudly, and because he believed the owner would discharge him. Held the employer's reasons for disciplining the claimant were reasonable and there was no evidence of imminent discharge. Moreover, the claimant failed to make reasonable efforts to preserve his job before separating. The claimant was ineligible for benefits pursuant to 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: 0080 2062 51

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 resigned from his position with the employer on March 30, 2023. He filed a claim for unemployment benefits with the DUA, effective May 7, 2023, which was denied in a determination issued on May 31, 2023. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on June 24, 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). 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 employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant's personality conflict with a coworker in the workplace was irreconcilable and his leaving was due to urgent, compelling, and necessitous reasons pursuant to G.L. c. 151A, c. 151A, § 25(e)(1), 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 full-time as an administrator for the employer's psychiatric practice from 10/1/20 until 3/30/23. At the time of hire, the claimant worked remotely; at the time of separation, the claimant was working in-person at the employer's business on one or two days each week because one of the

clinicians was seeing patients in-person. The claimant worked approximately forty hours per week and was paid an annual salary of $65,000. The owner of the business was the claimant's immediate supervisor.

2. Prior to working in-person, the claimant did not receive any criticism or negative feedback about his performance from the business owner.

3. After returning to work in the office, the claimant interacted with a new clinician. On one occasion, [sic] clinician left her office and made a gesture to the claimant, while he was speaking on the phone with a patient. The claimant understood the gesture, which was a cutting motion across her neck, was intended to tell the claimant to end his call. The claimant learned that the clinician considered the claimant's voice too loud. The claimant informed the business owner of this incident. On another occasion, the mother of a young patient contacted the employer's office stating that she would not be able to attend an in-person visit due to car problems. The claimant offered the mother to have the appointment held by video conference. The mother agreed to a video conference. The claimant was aware that the clinicians typically preferred to have first appointments conducted in-person and routinely conducted subsequent appointments remotely. After the claimant notified the clinician that the appointment was scheduled for a video conference instead of in-person, the clinician complained that the appointment had to be in-person. The claimant rescheduled the patient. The clinician subsequently sent an email message to the claimant on 4/3/23 that was intended for the business owner. The message reads, "On 3/22 he told my patient's mom the appointment could be virtual without checking with me first. She is only 10 y.o. and I only met her once so I would not have said yes to that. He fixed it but it was one more stressor that day."

4. An assistant was hired to work with the claimant. The claimant later learned that the assistant and the clinician were friends. The assistant told the claimant that her children grew up with the clinician's children. Sometime immediately prior to the claimant's separation, the claimant learned that the assistant and the clinician vacationed together. After returning from vacation, the assistant received a company credit card from the business owner.

5. On 3/1/23, the business owner told the claimant that she would like him to contact an administrator who worked at a friend's practice in Arizona. The owner asked the claimant to work with the administrator because he was successful in his role and the administrator at the Arizona office was struggling.

6. On 3/3/23, the claimant reminded the business owner that the clinician's one year service anniversary was on 3/1/23 and her performance review needed to be completed.

7. On or about 3/10/23, the business owner issued the claimant a written warning. The claimant was stunned and upset by being issued discipline. The owner told

the claimant that he was being warned for his behavior, including talking too loudly and for the patient issue where the mom stated she could not attend an appointment due to car trouble. The claimant was upset by the warning and concluded that the clinician did not like him and did not want to work with him, and that the business owner was favoring the clinician over the claimant. The claimant concluded that the assistant was hired to replace him, and that the employer would issue him one additional warning before discharging him because in his role as administrator, he told the business owner that two warnings should be issued before an employee is discharged.

8. On 3/10/23, the claimant notified the business owner that he was resigning effective 3/30/23 because of the warning stemming from a slew of complaints alleged against him. The claimant believed that the clinician would continue to make complaints about him, and the owner would discharge him.

9. The claimant filed an initial claim for unemployment insurance benefits, effective 5/7/23.

10. On 5/10/23, the claimant [sic] completed a DUA factfinding questionnaire, confirming that the claimant quit. In the responses, the employer wrote that the claimant "was given feedback by me (employer) that multiple coworkers (3) and myself expressed concerns about his recent behavior and performance at work. He requested specific instances of these complaints multiple times. I provided the specific instances given by coworkers in an email list which we planned to discuss in a meeting so he could have his say and we could hopefully move forward. Instead he became angry by the list he requested and refused to meet with me again, and then quit." The employer also wrote in part, "I originally felt badly for (Claimant) because he is a sensitive person and I think the negative feedback was difficulty to receive…"

11. On 5/31/23, the DUA issued the claimant a Notice of Disqualification, finding him ineligible for benefits under Section 25(e)(1) of the law.

12. On 6/6/23, the claimant appealed the Notice of Disqualification.

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 was entitled to benefits.

Because the claimant resigned from his employment, we analyze his eligibility for benefits pursuant to 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. . . .

The express language of these provisions assigns the burden of proof to the claimant. The review examiner concluded that the claimant met his burden. We disagree.

The findings establish that the claimant received a written warning by the owner regarding his behavior at work. More specifically, it was for talking too loudly and scheduling a patient for a virtual meeting without the consent of the clinician. *See* Findings of Fact ## 3 and 7. The findings also establish that the claimant resigned due to receiving the written warning and his belief that the clinician would continue to file complaints against him, which would later result in his termination. *See* Finding of Fact # 8.

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).

In the warning, the owner asked the claimant to be cognizant of the amplification of his voice in the workplace as his loud voice was disruptive to the clinician who was conducting a clinical session with a patient in a nearby office. *See* Finding of Fact # 7. In addition, the owner reminded the claimant that he should always check with the clinician before he schedules a virtual meeting with a first-time patient. *See* Finding of Fact # 3. [1]

A workplace reprimand or other form of discipline, if reasonable, does not create good cause attributable to the employer to quit a job. *See* Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 731 (1986). In this case, we see nothing in the record that suggests that the discipline the claimant received was unreasonable. The written warning was a reminder to the claimant that, although his actions were not done with ill will, he needed to lower his voice in the workplace and schedule patients in accordance with its business practices. We agree that such a response by the employer was reasonable, especially since the employer, a mental health provider, is in the business of providing psychiatric care. *See* Finding of Fact # 1. Therefore, the employer's March 10, 2023, written warning did not constitute good cause attributable to the employer to resign.

[1] The facts surrounding the clinician's request to ask the claimant to lower his voice is referenced in a text message conversation between the claimant and the owner marked as Exhibit # 13. While not explicitly incorporated into the review examiner's findings, the owner's statements 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).

Even assuming, *arguendo*, that the employer's discipline was unreasonable and constituted good cause attributable to the employer to resign, the claimant would not be eligible for benefits because he did not take reasonable steps to preserve his employment before leaving. The Supreme Judicial Court has held that an employee who voluntarily leaves employment due to an employer's action has the burden to show that she made a reasonable attempt to correct the situation or that such attempt would have been futile. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). In this case, the record indicates that the claimant made no effort to raise his concerns with the owner prior to resigning, as he resigned abruptly after receiving the written warning. *See* Findings of Fact ## 7 and 8.

The claimant further contends that he quit his job because he believed that he would have been discharged. This was based on his perception that the clinician did not like him, and that the employer favored the clinician over him. *See* Finding of Fact # 7. The Supreme Judicial Court has held that if employees leave employment under the reasonable belief that they are about to be fired, their leaving cannot fairly be regarded as voluntary within the meaning of G.L. c. 151A, § 25(e)(1). Malone-Campagna v. Dir. of Division of Employment Security, 391 Mass. 399, 401–402 (1984), *citing* White v. Dir. of Division of Employment Security, 382 Mass. 596, 597–598 (1981).

We agree with the portion of the review examiner's decision that the claimant did not demonstrate a reasonable belief of imminent discharge.

The findings reflect that the claimant never received any disciplinary action from the employer prior to receiving the written warning. *See* Finding of Fact # 2. Days before, the employer had praised the claimant's performance, telling him that he was successful in his role as an administrator and asking him to assist another practice with its administrative operations. *See* Finding of Fact # 5. Moreover, the employer had extended an opportunity to the claimant to further discuss the issues and his concerns at a meeting, but the claimant refused. *See* Finding of Fact # 10. In our view, this demonstrates that the employer wanted the employment relationship to continue. Under these circumstances, the claimant has failed to show that he was about to be discharged.

We do not agree the claimant left due to urgent, compelling, and necessitous reasons. 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.

Urgent, compelling, and necessitous reasons refers to personal circumstances such as sudden loss of childcare or a medical condition that render a worker unable to continue performing the job. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (childcare

demands may constitute urgent and compelling circumstances) (citations omitted.); *see also* 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). We do not believe that the Legislature intended this provision to be used for workplace personality conflicts.

Because the claimant did not show the presence of any personal circumstances beyond his control which necessitated departing from his employment immediately, he has failed to show that he left his employment for urgent, compelling, and necessitous reasons.

We, therefore, conclude as a matter of law that the claimant failed to show that he resigned for good cause attributable to the employer, for urgent, compelling, and necessitous reasons, or under a reasonable belief that he was about to be discharged. He is ineligible for benefits under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is denied benefits for the week ending April 1, 2023, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

Charlene A. Stawicki

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.

DY/rh