

Where the claimant resigned due to concerns regarding the type of care her child was receiving from the employer daycare facility and had made reasonable efforts to correct the situation and find alternative care prior to quitting, the claimant is eligible 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 2386 44

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 resigned from her position with the employer on May 11, 2023. She filed a claim for unemployment benefits with the DUA, 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 affirmed the agency's initial determination and denied benefits in a decision rendered on July 5, 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 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 is supported by substantial and credible evidence and is free from error of law, where the findings show that the claimant resigned due to concerns she had regarding the type of care her child was receiving from the employer daycare facility.

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 teacher for the employer, a childcare facility, between April 8, 2022, and May 11, 2023, when they were separated.
2. The claimant's immediate supervisor was the employer's director of programs.

3. The claimant's duties included, but were not limited to, floating to different classrooms as needed to cover breaks for other teachers.
4. The claimant's child was a student at the employer.
5. A few weeks prior to their separation, the claimant became concerned about the care their child was receiving.
6. Approximately the same time the claimant was concerned about their personal childcare situation, the claimant's supervisor changed.
7. The supervisor wanted to change the claimant's title to add additional duties to their position for when they were not performing floating activities.
8. Examples of the additional duties included but were not limited to organizing a closet and putting away groceries.
9. The claimant informed the employer they were separating due to the level of childcare their child was receiving at the facility.
10. The claimant did not request a leave of absence (LOA).
11. The claimant requested a transfer; however, they were denied a transfer. The employer did not provide the claimant with a reason.
12. The claimant quit their job with the employer on May 11, 2023, due to their concerns regarding their childcare at the employer.
13. The employer had work available to the claimant at the time that the claimant resigned.
14. The employer did not have any intent to discharge the claimant.

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 original 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 disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits.

Because the claimant resigned from her employment, we analyze her 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.

In this case, the claimant resigned from her job due to concerns she had regarding the type of care her three-year-old child was receiving as a student at the employer's daycare facility. *See Findings of Fact* ## 4, 9, and 12. The claimant faced a unique situation, as her employer also happened to be her child's daycare provider. However, the findings are clear that she resigned because of childcare issues. *See Findings of Fact* ## 9 and 12.

In our view, the claimant has shown that she resigned due to urgent, compelling, and necessitous circumstances. 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). Childcare responsibilities may constitute such circumstances. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983).

In this case, the claimant testified that her child's "teacher had hit a child in the face with something, some type of an object . . . my child was not getting the education she was supposed to be receiving, she was leaving the classroom, they were not checking, so I made the ultimate decision, based on the stuff I was going through, and what she was going through, and taking her out of the class."¹ She stated that she saw her child walking around outside of her classroom, and it did not appear that staff noticed she had left. Further, the claimant provided consistent and unrefuted testimony that the alleged neglect of her child began around March, 2023, and persisted until she left in May, 2023. Given what the claimant knew and observed about her own child and the mistreatment of other children in the program, we believe her decision to remove her daughter from the employer's daycare was reasonable.

In her decision, the review examiner states that even though the claimant pulled her daughter out of the program, the claimant could still have continued working for the employer. The record does not support this, as it is self-evident that she could not continue working without childcare for a three-year-old.

¹ This testimony as well as other portions of her testimony and written statements to the DUA 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); *see also* Exhibits 4 and 6, the claimant's fact-finding questionnaires, where claimant reported, in pertinent part, that her child was being mistreated by teachers in her classroom and that her child would run out of the classroom looking for the claimant.

The question is whether the claimant tried to find alternative childcare before leaving her job. “Prominent among the factors that will often figure in the mix when the agency determines whether a claimant’s personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant 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 v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2009), *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–98 (1974).

The findings show that she had requested a transfer to a different location, but this was denied. Finding of Fact # 11. Although there are no other findings relating to other preservation efforts that she made, the claimant testified that she escalated her childcare concerns to her “boss’s boss and that boss’s boss,” (two upper-level supervisors who were above her immediate supervisor) roughly one to one and half months prior to resigning, and that, during that time, she attempted to find another childcare center that accepted vouchers, hire a nanny, and solicit family members to provide child care, but was unsuccessful. *See also* Exhibits 4 and 6. She stated that she waited nearly two months before resigning to see if the employer was going to make any changes that would address the issues she raised, and that she decided to resign only when she saw that the employer did not take any steps to address her concerns. These actions constitute reasonable efforts to preserve her employment prior to resigning.

We, therefore, conclude as a matter of law that the claimant separated from her job due to urgent, compelling, and necessitous circumstances, and she is eligible for benefits under G.L. c. 151A, § 25(e)(1).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week beginning May 7, 2023, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 24, 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