

**The claimant's need for a day shift schedule in order to care for his ill daughter constitutes an urgent, compelling and necessitous reason to quit his employment where the employer did not have a day shift schedule available. He is eligible for benefits under 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: 0080 3036 95**

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 his position with the employer on April 28, 2023. He filed a claim for unemployment benefits with the DUA with an effective date of May 7, 2023, which was approved in a determination issued on May 10, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on July 8, 2023. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant resigned his 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). 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 claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant quit his position due to general job dissatisfaction, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

1. Prior to filing for benefits, the claimant worked as an assistant manager for the employer, a garage management company. The claimant began working for the employer on 9/3/2021. He worked a full-time schedule, 7:00 a.m. – 3:00 p.m. two days per week and 3:00 p.m.– 11:00 p.m. three days per week, and earned \$26.00 per hour.
2. The claimant's supervisor was the employer's location manager.

3. The claimant was out on a paid leave pursuant to the Family and Medical Leave Act (FMLA) beginning on or about 10/27/2022, following the birth of his daughter.
4. The claimant's daughter was born with a medical condition.
5. After the leave was extended, the employer expected the claimant to return to work on 1/21/2023.
6. On 1/15/2023, the employer's portfolio manager texted the claimant asking for his hours of availability for when the claimant returned from his FMLA leave.
7. On 1/15/2023, the claimant replied via text message that he was able to work 7:00 a.m. – 3:00 p.m. Tuesday through Saturday.
8. On 1/15/2023, the employer's portfolio manager responded "That should work while [the employer's location manager] is away for a few weeks. Upon his return, I think two of the shifts will be 3-11. [The employer's location manager] will work out the long term schedule".
9. On 1/24/2023, the claimant returned to work for the employer, working 7:00 a.m. – 3:00 p.m. over five days per week.
10. On 3/3/2023, the claimant emailed the employer's director of culture, standards, and training asking whether there was an opportunity for growth with the employer.
11. On 3/7/2023, the claimant came into work and looked at the posted schedule. The claimant determined that, beginning the following week, the claimant was scheduled to work two day shifts, 7:00 a.m. – 3:00 p.m., and three evening shifts, 3:00 p.m. – 11:00 p.m.
12. On 3/8/2023, the claimant emailed the employer's management team that he was unavailable to work the 3:00 p.m. – 11:00 p.m. shift "at this time right now" and added "I initially texted about this but no one responded".
13. On 3/10/2023, the claimant emailed the employer's director of culture, standards, and training stating in relevant part "I am writing this email because I really want something to change within the next week or two. I no longer want to work at this location... I feel like I was taken advantage of. I really want to look into taking on a new role here at [the employer] where I can really utilize my talents and skills" and later "Yesterday I received an email that you were CC'd in about an opportunity. I would like to explore that opportunity".
14. On 3/10/2023, the director of culture, standards, and training replied in relevant part "I have set up these meetings to get you ready for the next opportunity"

- and “At this point, I think we need to bring [the portfolio manager] in for this has turned into an operational situation”.
15. On 3/10/2023, the claimant responded, indicating concerns with his schedule and accompanying issues with childcare and stating, “I just need something more consistent and more financially stabilizing for my life”. A meeting was scheduled for 3/13/2023.
  16. During the week beginning 3/13/2023, the employer’s portfolio manager placed the claimant at a different work location that allowed the claimant to continue working the 7:00 a.m. – 3:00 p.m. shift, five days per week. The employer’s portfolio manager told the claimant that the accommodation would be available for roughly six weeks, ending on 4/28/2023.
  17. In or about April 2023, the employer’s property manager contacted the claimant and offered him a new placement that would require the claimant to work the evening shift. The claimant declined the new placement.
  18. On 4/24/2023, the claimant emailed the employer’s payroll manager asking for training in an operational program. After some back and forth, on 4/25/2023, the employer’s payroll manager did not reply to two emails sent by the claimant.
  19. On 4/26/2023, the employer’s portfolio manager contacted the claimant and advised the claimant of a new placement, beginning the following week, after the conclusion of the current placement. The employer’s portfolio manager told the claimant that the new location placement would require the claimant to work 7:00 a.m.– 3:00 p.m. two days per week and 3:00 p.m. – 11:00 p.m. three days per week. The claimant told the portfolio manager that he would discuss the matter with his spouse and would reach back out to the portfolio manager.
  20. The claimant had no further contact with the employer’s portfolio manager.
  21. The claimant decided to quit because he was unable to work the evening shift due to a lack of childcare.
  22. The claimant last performed work for the employer on 4/28/2023.
  23. The claimant initiated his separation from the employer.
  24. The claimant quit due to general job dissatisfaction.
  25. Prior to his separation, the claimant did not contact the employer’s human resources department to discuss the concerns regarding his hours or salary.
  26. The claimant’s job was not in jeopardy when the claimant resigned.
  27. The employer had work available at the time of the claimant’s resignation.

28. On 5/31/2023, the Department of Unemployment Assistance (DUA) issued a Notice of Approval to the employer. The employer appealed that determination.

### 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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject Finding of Fact # 24, because it is not supported by the record. In adopting the remaining findings, we deem 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 not entitled to benefits.

Because the claimant quit his position, his eligibility for benefits is governed by G.L. c. 151A, § 25(e), 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.

By its terms, the statute specifies that the claimant bears the burden to show that he is eligible for unemployment benefits. The record here does not indicate that the claimant left his employment as a result of any action taken by the employer. We, therefore, need not consider whether the claimant had good cause for leaving attributable to the employing unit or its agent under G.L. c. 151A, § 25(e)(1).

We address whether the claimant left work involuntarily 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). This includes childcare responsibilities. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted).

In 2022, the claimant’s daughter was born with a serious medical condition, which impedes her breathing and impairs her ability to sleep, receive nutrition, and grow. *See* Findings of Fact ## 3 and 4. As noted in the hearing decision, the claimant explained that he was unable to work evening

shifts due to lack of childcare for his ill infant. He testified that his wife works in the evening.<sup>1</sup> After the claimant returned to work following his leave of absence for the birth of his daughter, the employer was only able to provide the claimant with the day shift schedule on a temporary basis. *See* Findings of Fact ## 3, 8, 16, 17, and 19. Each time that the employer offered the claimant a schedule with evening shifts, he declined. *See* Findings of Fact ## 11, 12, 17, and 19. The claimant eventually left work, because he did not have childcare to cover the assigned evening shifts. *See* Finding of Fact # 21. These childcare responsibilities constituted an urgent, compelling, and necessitous reason to resign from work.

We now address whether the claimant made a reasonable attempt to preserve his employment prior to quitting. Even if the claimant had carried his burden to show that circumstances beyond his control were forcing him to resign, “[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 [his] 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, 597-98 (1974). The claimant’s continued efforts to ask for day shifts shows his desire and willingness to remain employed.

Here, the claimant explicitly asked for day shifts on two occasions, on January 15, 2023, and March 8, 2023, repeatedly declining a schedule that contained evening hours. *See* Findings of Fact ## 7, 12, and 17. By April 26, 2023, it became apparent that the employer could no longer offer the claimant day shifts, as the employer asked the claimant to work evening shifts once more. *See* Finding of Fact # 19. Indeed, the employer’s own Portfolio Manager and Operations Manager testified at the hearing that earlier shifts were not available.<sup>2</sup> This record shows that the claimant made reasonable efforts to preserve his job in a way that would accommodate his childcare constraints, and he could reasonably conclude that further attempts would have been futile.

In her decision, the review examiner states that the claimant failed to provide substantial evidence as to why his spouse could not assist with meeting the employer’s scheduling demands. Claimants are only expected to make reasonable job preservation efforts, which the claimant here has done. He must show reasonable efforts to preserve his employment before leaving, not that he had “no choice to do otherwise.” Norfolk County Retirement System, 66 Mass. App. Ct. at 766 (citation omitted).

We also disagree that it was the claimant’s failure to get back to the portfolio manager that caused his separation. Although the claimant should have responded as a matter of common courtesy, it does not detract from the weight of the evidence, which shows that childcare demands rendered him unable to perform the offered work.

---

<sup>1</sup> While not explicitly incorporated into the review examiner’s findings, this portion of the claimant’s testimony is part of the unchallenged evidence introduced at the hearing and placed in the record, and it 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).

<sup>2</sup> This testimony is also part of the unchallenged evidence introduced at the hearing.

We, therefore, conclude as a matter of law that the claimant is not disqualified from receiving benefits under G.L. c. 151A, § 25(e)(1), because his separation from employment was due to urgent, compelling, and necessitous reasons.

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

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 30, 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](http://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.

MR/rh