

The claimant resigned her position for urgent, compelling, and necessitous reasons in order to provide her grandmother with full-time hospice care. Because her grandmother lived out of state and the claimant would be providing hospice care for an indefinite period, the nature of her work as a PCA meant that any further attempts to preserve her employment with the instant employer would have been futile. Held she is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0080 5297 37

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 May 30, 2023. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on August 5, 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 August 30, 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). 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's need to provide hospice care for her grandmother constituted urgent, compelling, and necessitous reasons for the claimant's resignation, but she did not take reasonable steps to preserve her employment, 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 part-time as a personal care attendant (PCA), for the employer, a patient, from January 15, 2022, through May 26, 2023.

2. The claimant's duties included, but were not limited to, assisting the patient with daily living needs.
3. The claimant's supervisor was the patient.
4. On or around May 25, 2023, the claimant's grandparent required in-home hospice care. The claimant moved out of state to provide the hospice care.
5. The claimant did not request a leave of absence.
6. Due to the nature of the claimant's work, a transfer was not an available option for the claimant.
7. The claimant opened an unemployment claim having an effective date of June 11, 2023. The Department of Unemployment Assistance (DUA) determined their benefit rate to be \$546.00 per week. The claimant's earnings disregard (the amount they can earn before deductions are made from their benefits) was determined to be \$182.00.
8. Since June 11, 2022, the claimant had also been working a part-time job as a customer service representative for a food and beverage company.
9. The claimant quit their position with the instant employer on May 30, 2023, to provide their out of state grandparent with hospice care.

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, while we believe that the review examiner's findings of fact support the conclusion that the claimant resigned her position for urgent, compelling, and necessitous reasons, we believe that the review examiner erred in denying the claimant benefits.

As the claimant resigned her position with the instant employer, this case is properly analyzed under 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.

The express language of the statute places the burden of proof upon the claimant.

There is no indication from the record that the claimant resigned because of some decision made or action taken by the employer. Therefore, we need not consider whether the claimant 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). Domestic responsibilities, such as the need to provide care for a family member, may be sufficient to show such urgent and compelling circumstances as to render a claimant’s separation involuntary. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted).

The review examiner found that the claimant resigned her position with the instant employer because she needed to provide in-home hospice care for her grandparent. *See* Finding of Fact # 4. We are satisfied that this constituted an urgent, compelling, and necessitous reason that ultimately caused the claimant’s separation.

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 his employment’ as would indicate the claimant’s ‘desire and willingness to continue his 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.

Usually, a claimant can show that she desired to stay employed by making affirmative efforts to keep her job. 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 Accordingly, a claimant’s duty to undertake reasonable preservation efforts does not require her to request or take a leave of absence in every circumstance. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984) (“We reject the notion that in order to be eligible for benefits an employee must request a transfer to other work or a leave of absence.”).

While not in the findings of fact, the claimant’s uncontested testimony was that she was unsure how long she would need to be out-of-state providing care for her grandparent. Because of this uncertainty, the claimant did not believe that an indefinite unpaid leave of absence was a feasible

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

course of action that would enable her to remain employed.² Given these facts, we believe that the review examiner erred in finding the claimant ineligible for benefits on the grounds that she did not request a leave of absence from the instant employer.

Moreover, the claimant needed to be physically present with the patient to perform her duties. Thus, a reduction in hours or transfer also would not have allowed the claimant to preserve her employment. Consolidated Findings ## 2 and 6. As nothing in the record suggests there were feasible options to pursue, she may not be disqualified due to failure to take steps to preserve her employment.

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 for the week beginning May 28, 2023, and for subsequent weeks, if otherwise eligible.

N.B. The record indicates that the claimant limited her availability for work after moving out of state to provide hospice care for her grandmother. For this reason, we are asking the agency to investigate the claimant's eligibility for benefits under the provisions of G.L. c. 151A, § 24(b).

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 29, 2023



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:

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 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).

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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