

Due to his inconsistent testimony, the claimant did not establish that he had an urgent, compelling, and necessitous reason to leave his job. Nor did he establish that he made reasonable efforts to preserve his employment before resigning because the employer could have assisted him with a job transfer. Therefore, he is disqualified from receiving benefits under G.L. c. 151A, § 25(e)(1).

**Board of Review
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Issue ID: 0081 1232 54

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 filed a claim for unemployment benefits with an effective date of September 10, 2023, which was denied in a determination issued by the agency on September 30, 2023. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits attended by the claimant and the employer, the review examiner affirmed the agency's initial determination to deny benefits in a decision rendered on November 3, 2023. The claimant sought review by the Board, which affirmed, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On November 19, 2024, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning whether the claimant was able to find housing closer to his place of employment. Only the claimant attended the remand hearings. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant resigned his employment to move, and did not make reasonable efforts to preserve his employment, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment, which were issued following the District Court remand, are set forth below in their entirety:

1. Prior to filing for benefits, the claimant worked as an inventory coordinator II for the employer, the repackaging chemicals division of a health sciences corporation. The claimant began working for the employer on 8/15/2022. He worked a full-time schedule, 6:30 a.m. – 3:00 p.m. Monday through Friday, at the employer's location in [City A], and earned \$22.83 per hour.
2. The claimant's supervisor was the employer's manufacturing supervisor.
3. The claimant performed his job duties at a chemical repackaging location in [City A] that had operating hours that ended at 4:00 p.m.
4. Five to eight years ago, the claimant applied for subsidized housing in the city of [City B].
5. Beginning in or about 2017, the claimant resided with his partner in [City C], about a twenty-to-thirty-minute drive from his workplace. He also lived with his partner's mother, brother, two children, an ex-partner, and the ex-partner's children.
6. The claimant contributed \$1,400.00 monthly toward the mortgage on the residence, owned by his partner and her brother.
7. In 2022, the claimant's minor child moved in with the claimant (Child).
8. In mid-2023, the claimant and his partner ended their relationship. The claimant and his Child continued to live in the same dwelling.
9. In mid-2023, the claimant began looking for a new residence. He applied to no more than six units in the [City C], [City D], [City A] area, having a rent of no more than \$1,800.00.
10. The claimant believed his credit score prevented landlords from renting to him.
11. In the beginning of August 2023, the claimant learned that he was approved for subsidized housing.
12. The claimant's lease on the [City B] dwelling began on 8/30/2023.
13. On or about 9/4/2023, the claimant moved.
14. During the week beginning on or about 9/4/2023, the claimant worked less than full-time, approximately thirty hours, because he was completing documents to transfer his Child from her previous school to the local elementary school.
15. On 9/11/2023, the Child began attending school in the city of [City B].
16. The Child's new elementary school starts at 7:30 a.m. on weekdays.

17. Since moving to [City B], the claimant is solely responsible for dropping off his Child at school.
18. On or about 9/14/2023, the claimant spoke to his supervisor and requested a different schedule, 8:00 a.m. – 4:30 p.m. The supervisor told the claimant that schedule was not available (as the location closes at 4:00 p.m.). The claimant resigned.
19. The claimant last performed work for the employer on 9/14/2023.
20. On 9/14/2023, the claimant emailed the supervisor his letter of resignation, effective immediately.
21. The claimant quit to move because he received an offer of subsidized housing.
22. The claimant's job was not in jeopardy at the time of his resignation.
23. The employer had work available when the claimant resigned.
24. Prior to resigning, the claimant did not contact the employer's human resources department. The employer's human resources department would have assisted the claimant in effectuating a transfer to a different location of the employer.
25. On 9/30/2023, the Department of Unemployment Assistance (DUA) issued a Notice of Disqualification to the claimant. The claimant appealed that determination.

Credibility Assessment:

The claimant, the employer's human resources manager, and an interpreter for the claimant participated in the initial hearing by telephone on 10/23/2023. The employer's witness attended the hearing as a witness only.

The claimant, the claimant's legal representative, and several interpreters for the claimant participated in both remand hearings by telephone on 1/10/2025 and 1/27/2025. Although duly notified, the employer did not participate in either remand hearing.

During the initial hearing, the claimant alleged that the employer initiated his separation, first by his supervisor telling the claimant that the employer's human resources department was giving him a warning for working a thirty-hour workweek the prior week causing him to believe his job was in jeopardy, and second by the employer failing to accommodate his request for a schedule change that would have allowed him to commute to work after dropping his child off at school. During that initial hearing, the employer's witness effectively rebutted the claimant's testimony, stating that she was unaware of any intention to discipline

the claimant, that the employer had ongoing work available, and that the claimant's position was not in jeopardy. As the claimant failed to provide evidence of any discipline and affirmed that he received no warnings from the employer, it is determined that the employer's witness testimony is credible.

During the first hearing, the claimant offered direct testimony that he requested a new start time on 9/14/2023, following his move to [City B]. He further asserted that during that conversation with his supervisor, he requested to work 8:00 a.m. - 4:30 p.m., but the employer's supervisor advised him a different schedule was not available, resulting in the claimant's decision to quit because he perceived he would be unable to arrive at work on time due to the commuting distance from his new residence. Both parties concurred that the location at which the claimant performed his job duties closed at 4:00 p.m.

During both remand hearings, the claimant provided inconsistent and general testimony that he spoke to his supervisor "many, many, many times" regarding his request for a later start time, prior to his move to [City B]. During the first remand hearing, the claimant added new testimony, not attested to during the initial hearing, that he asked his supervisor for a transfer to a different repackaging location in [City A] that could accommodate the claimant's scheduling needs prior to signing the lease for his new residence in the [City B]. The employer was not present at either of the remand hearings to rebut the claimant's additional testimony. Nevertheless, due to the inconsistencies, I find the claimant's testimony not credible.

Throughout his testimony, the claimant asserted that he would have continued to work for the employer if the employer had agreed to a change in work schedule allowing the claimant to commute one-and-a-half to two hours to work from his new residence in [City B]. During the initial hearing, both parties affirmed that the claimant was scheduled to start work at 6:30 a.m. During the initial hearing and the first remand hearing, the claimant testified that he requested a start time of 8:00 a.m. During the initial hearing, he attested that he knew the employer had an available schedule at the location where he performed his job duties, because he observed coworkers arriving as late as 7:30 a.m. When pressed, the claimant recounted that he did not observe coworkers arriving at 8:00 a.m. During the remand hearings, the claimant offered inconsistent testimony, stating that he requested a start time between 9:00 a.m. and 10:00 a.m., and testifying to observing coworkers arrive as late as 9:00 a.m. at a different facility of the employer. Nevertheless, the claimant testified that his supervisor advised him that a later start time was not available, and the employer's witness affirmed that a later start time was not available at the facility at which the claimant performed his work duties, corroborating the claimant's testimony. The claimant affirmed that he quit because he believed he would be unable to maintain his work schedule.

During the remand hearings, the claimant gave inconsistent testimony with regard to the time he had to drop his child off at school. Initially, he stated that school started at 7:30 a.m., however he later amended his testimony to a 7:00 a.m. drop off

time. As the claimant testified numerous times that the commute time between his child's school and the employer was one-and-a-half to two hours, depending on traffic, it is determined that, during the initial hearing and the first remand hearing, the claimant offered illogical testimony that he requested a start time of 8:00 a.m. During the initial hearing, the claimant argued that he needed to move urgently due to a break-up with his partner. He stated that he began to look for new housing in July 2023. He attested that he was unable to find any housing in the vicinity of his workplace. During the remand hearings, the claimant provided expanded testimony on the circumstances that led to his move. He stated that he and his partner separated three to four months prior to his move, but she allowed him and his child to stay with her. The claimant alleged that in August 2023, his former partner was leaving for vacation and directed the claimant to no longer be in their dwelling when she returned. Initially, the claimant stated that his former partner afforded him one month to find alternative housing. He then changed his testimony, stating that she was away on vacation for two weeks, inferring that he had two weeks to vacate the premises. During the first remand hearing, the claimant provided further inconsistent testimony, stating that he had been looking for housing for three to four months and had viewed eight to ten apartments and filled out six applications prior to determining that he was unable to locate suitable housing near his workplace.

During the remand hearings, the claimant further argued that he had to move because of the mental health of his child. He offered vague and general testimony that his former partner was verbally abusive by raising her voice or demanding his child eat certain foods that the child did not want. The claimant added that his child would become upset that he and his partner were arguing. The claimant directly stated that the relationship between his former partner and child was strained since the child moved in with him sometime in 2022. During the final remand hearing, the claimant added that on some unknown date in the beginning of 2023, one of the other children residing with his former partner pushed his child down some stairs on some unknown date resulting in some bruising to his child's back. The claimant affirmed that he never sought any medical care for his child as a result of his concerns over her physical or mental health. He conveyed that his child regularly spoke to a court-appointed social worker, and the social worker did not advise the claimant to move. Therefore, it is determined that the claimant failed to demonstrate that the relationship between his child and former partner resulted in an urgent need for the claimant to move.

Throughout the hearings, the claimant argued that, since July 2023, he was looking for suitable housing in the area of his workplace. He testified that despite attending open houses, completing about six housing applications, and speaking to his supervisor who owns multiple units in the area, he was unable to locate suitable housing for himself and his daughter within proximity of his place of employment. During the initial hearing, the claimant stated that his criteria as he looked for alternative housing was a two-bedroom dwelling within the area of his employment. During the first remand hearing, the claimant added that he was searching for a dwelling that cost less than \$1,800.00, having previously paid \$1,400.00 to his partner's brother in rent. He stated that, when he felt desperate due

to his partner's ultimatum in August of 2023, he began looking for "anything in general" or a room with a separate sleeping area for his child. During the initial hearing, the claimant stated he looked for housing in [City C], [City A], [and] [City E]. During the first remand hearing, the claimant stated he looked for housing in [City C], [City A], and [City D]. During the second remand hearing, the claimant added that he looked for housing in [City D], [City A], [City F], and [City C] and confirmed that he did not seek housing outside of that geographic area other than in [City B].

During the remand hearing, the claimant vaguely stated that on some unknown date, five to eight years ago, the claimant applied for subsidized housing at one building in the [City B] area. He added that, when given the ultimatum by his partner, having felt that he exhausted his search in the area surrounding his workplace, he returned to the building on some unknown date in August 2023 as a last resort and was given his choice of three or four apartments, for which the building staff assisted the claimant with filing new paperwork and he was approved for a subsidized apartment. Although the claimant initially attested that his former partner had given him about two weeks to vacate his prior housing, during the remand hearings, the claimant attested that it took about a month after his inquiry to receive approval and the lease for the subsidized housing. During the second remand hearing, the claimant added that he received the lease agreement on 8/20/2023. During the initial hearing, the claimant attested to executing the lease on 9/1/2023. The record was left open to allow the claimant the opportunity to provide the lease to the department. The record shows that the claimant executed the lease agreement for the subsidized housing on 8/30/2023. The record further shows that the lease began on 8/30/2023.

During the initial hearing, the claimant vaguely responded that in June or July of 2023, he applied for other positions with the employer, including an available position in [City G] and [City H]. He stated that he received no response, resulting in his request for a different schedule at his current position. During the initial hearing, the claimant inconsistently attested that he applied in June or July of 2023, "because I already had approval that I would be moving".

Both parties agreed that the claimant reported that he resigned due to the difficulties of his commute from his new residence in [City B]. Both parties agreed that the claimant did not reach out to the employer's human resources department prior to his separation. The employer's witness provided additional direct testimony that the employer's human resources department could have assisted the claimant with a transfer to a more convenient location. Moreover, the employer's witness offered hearsay testimony that the claimant's supervisor reported that the claimant initiated his separation without requesting a change in schedule and that the claimant told the supervisor that he would return to work for the employer if the employer offered him a raise. Although the claimant may have requested a raise, this review examiner does not believe that a raise would have compelled the claimant to continue working for the employer.

Due to the numerous inconsistencies and illogical reasoning, the claimant's testimony cannot be deemed credible. As such, it is determined that the claimant decided to move to [City B] because he received an offer for subsidized housing without consideration of his employment and irrespective of the employer's ability to honor a request for a change in schedule. It is further determined that the claimant failed to provide substantial and credible evidence of any attempt to preserve employment. Although the claimant's separation from his partner and his child's mental health may be a compelling and necessitous reason to move, the claimant failed to substantially demonstrate the urgency of the move so far from the employer's workplace.

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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. Although we believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented, we do not adopt the portion of the last two sentences of the assessment, which reach legal conclusions. At this point in the proceedings, such decisions are left to the Board. *See Dir. of Division of Employment Security v. Fingerman*, 378 Mass. 461, 463-464 (1979). As discussed more fully below, we agree with the review examiner's conclusion that the claimant was not entitled to benefits.

The review examiner initially determined that the claimant was ineligible for benefits because he quit his job to move, and he perceived that the employer would not accommodate a work schedule amenable to his new commute. The District Court ordered the Board to remand the case to the review examiner to make findings of fact as to whether the review examiner credited the claimant's testimony that he could not find housing closer to his place of employment and what factors the review examiner relied upon in making that credibility determination.

The record supports the conclusion that the claimant initiated his separation from employment. Thus, his eligibility for benefits is properly analyzed under the following provisions of G.L. c. 151A, § 25(e), which provide, 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.

The express language of these provisions place the burden of proof upon the claimant.

To determine whether 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). There is nothing in the record to indicate that the employer did or failed to do something that gave the claimant a reason to quit his job. Accordingly, the claimant did not separate from his employment for good cause attributable to the employer.

We also consider whether the claimant has demonstrated an urgent, compelling, and necessitous reason to quit his employment. 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 consolidated findings provide that the claimant quit his employment because he moved to [City B]. Specifically, he could not meet his scheduled 6:30 a.m. shift start time at the employer's work location in [City A] due to his need to drop off his child at her new school and the long commute. *See* Consolidated Findings ## 1, and 13–18. Given that the claimant's relationship with his partner ended in 2023, she owned his place of residence, and she asked him to leave, the record does suggest that there may have been an urgent, compelling, and necessitous reason to move. *See* Consolidated Findings ## 8 and 9. Ultimately, however, the review examiner found that the claimant moved because he obtained the subsidized housing in [City B] that he had applied for years before. *See* Consolidated Findings ## 4, and 11–13. Due to the claimant's inconsistent testimony about when his partner asked him to leave, how much time she allowed him to stay in her residence, and when he first started looking for alternative housing, we believe that the review examiner reasonably rejected the claimant's assertion that this break-up created an urgent reason to move in the beginning of September, 2023. *See* Consolidated Finding # 13.

To be sure, there is evidence that he tried to find housing closer to his workplace. The consolidated findings provide that he applied for six units within the vicinity. *See* Consolidated Finding # 9. This tends to support the necessity for him to search for more distant housing. However, because the claimant has not demonstrated an urgent need to move in September, 2023, he does not qualify for benefits under the urgent, compelling, and necessitous provision in G.L. c. 151A, § 25(e).

Even assuming that the claimant had shown that he resigned for urgent, compelling, and necessitous reasons, the claimant has not shown that he took reasonable steps to preserve his employment. To qualify for benefits, a claimant who resigns from employment must also show that he made reasonable efforts to preserve his 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.

The claimant spoke to his supervisor and requested an 8:00 a.m. to 4:30 p.m. schedule, but the claimant's supervisor told him that the schedule was not available. *See* Consolidated Finding # 18. Given his other testimony, as mentioned in the credibility assessment, which asserted that he had to drop his daughter off at school in [City B] at 7:30 a.m. and that it took one and a half to two hours to commute from his new [City B] residence to the employer's [City A] location, we do not consider a request to start at 8:00 a.m. to be a reasonable attempt to keep his job. *See* Consolidated Finding # 16. Further, the claimant did not contact the employer's human resources department at any point prior to resigning on September 14, 2023, to seek a transfer to a different location closer to his new home. *See* Consolidated Finding # 24. As a result, the employer did not have the opportunity to resolve the claimant's commuting concerns, and the claimant has not shown that further attempts to resolve the issue would have been futile.

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).

The review examiner's decision is affirmed. The claimant is denied benefits for the week beginning September 10, 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 25, 2025



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.

MR/rh