The claimant declined the employer's offer of a new assignment because the location was inconvenient for her in the mornings when she had to drop her son off at daycare. Added inconvenience in the claimant's commute is insufficient to show the claimant resigned for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e). She also did not make any efforts to preserve her employment even though the employer had previously granted her accommodations relating to her childcare needs. Therefore, she is ineligible for benefits.

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: 0081 1920 41

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 separated from her position with the employer on September 18, 2023. She filed a claim for unemployment benefits with the DUA, effective September 17, 2023, which was approved in a determination issued on October 26, 2023. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on November 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). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional information about the claimant's separation from her employment. Only the claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant quit without good cause attributable to the employer or urgent, compelling, and necessitous reasons because she quit in order to move out-of-state, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessment are set forth below in their entirety:

1. Prior to filing for benefits, the claimant began working as a medical assistant for the employer, a staffing agency, on 2/23/2023.

2. On 2/23/2023, the employer placed the claimant as [sic] a medical facility in [City A] (client).

3. The claimant resides in [City A].

4. The claimant worked a part-time schedule for the client, 9:00 a.m. – 3:30 p.m. Tuesday through Friday, an average of twenty hours per week, and earned $21.50 per hour.

5. The employer defines full-time as thirty or more hours of work per week.

6. The claimant's supervisor was the employer's recruitment advisor.

7. The claimant has a three-year-old child who attends daycare which begins at 8:45 a.m.

8. The claimant is pregnant. Her due date is 4/10/2024.

9. During her employment, the employer's client texted the claimant that there was no work available to her during the period beginning 8/22/2023 through 8/24/2023, 8/30/2023 and 8/31/2023, and 9/6/2023.

10. During the week beginning 9/11/2023, the claimant's supervisor contacted the claimant and informed her that the original placement with the client would be ending on 9/15/2023 due to a lack of work.

11. On even date [sic], during the same conversation, the claimant's supervisor offered the claimant a new assignment, performing the same work, during the same hours, for the same rate of pay at a different location for the same medical facility in that facility's [City B] location, beginning on 9/18/2023 (new assignment).

12. On the same date, the claimant accepted the new assignment.

13. On 9/15/2023, the claimant's original assignment for the client came to an end.

14. The claimant last performed work for the employer on 9/15/2023.

15. The employer anticipated that the claimant would begin her new assignment on 9/18/2023.

16. On an unknown date, the claimant viewed the location of the new assignment on an online application and determined that it was too far from her residence.

17. The claimant believed that it would be difficult to drop her child off at daycare and arrive to work in a timely manner.

18. On 9/18/2023, the claimant contacted the employer's timecard keeper and advised her that she was unable to start the new assignment due to housing insecurity.

19. On 9/18/2023, the claimant filed for unemployment benefits with the Department of Unemployment Assistance (DUA), effective 9/17/2023.

20. On 9/19/2023, the claimant's supervisor called the claimant, and the claimant informed the supervisor that she could no longer accept the new assignment due to personal reasons requiring the claimant to move out-of-state. The employer accepted the claimant's resignation.

21. The claimant initiated her separation from the employer.

22. The claimant quit because she believed the location of the new assignment was inconvenient.

23. The claimant's job was not in jeopardy when she separated.

24. The claimant had not received any prior warnings or disciplinary action from the employer.

25. The claimant did not bring her concerns regarding the new assignment to the attention of the employer prior to her separation.

26. The employer had work available at the time of the claimant's separation.

27. On 10/26/2023, the Department of Unemployment Assistance (DUA) issued a Notice of Approval to the employer. The employer appealed that determination.

Credibility Assessment:

The employer's talent human resources generalist and the employer's representative participated in the initial hearing. The claimant did not attend. On 1/16/2024, a remand hearing was held via telephone. The claimant and a Haitian Creole interpreter for the claimant participated in the remand hearing. Although the employer's representative appeared for the employer, she did not participate in the hearing and disconnected prior to the claimant's testimony.

At the remand hearing, the claimant provided unresponsive testimony related to her failure to begin a new placement offered by the employer. At the first hearing, the

> employer's witness attested that the claimant was working in a part-time position, an average of twenty hours per week, until the placement came to an end and the employer offered the claimant similar terms in a new location in a neighboring city for the same client. The employer's witness added that the claimant initially accepted the new position, only to decline it on the anticipated start date. Initially, the claimant alleged that she was not a part-time employee. However, the claimant later affirmed that she worked an average of about eighteen hours per week for the employer's client. The claimant alleged that she could not be certain that the employer would be able to place her in a new position; she then confirmed that the instant employer did offer her a new position for the same client in [City B]. The claimant argued that she was unable to start the new position because of its location being too far. She vaguely stated that the new location would make it difficult to address her childcare needs due to her transportation constraints and the schedule for the new assignment. The claimant affirmed that she did not bring her concerns regarding the location of the new position to the attention of the instant employer prior to her anticipated start date. At the initial hearing, the employer's witness testified that at the time of the claimant's separation, the employer had numerous placement opportunities. Due to the vague and unresponsive nature of the claimant's testimony, the employer's witness testimony is deemed credible.

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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. As discussed more fully below, we agree with the review examiner's legal conclusion that the claimant is not eligible for benefits.

Since the claimant was employed by a temporary help firm, we must consider whether the circumstances of her separation implicate the provision of G.L. c. 151A, § 25(e), concerning employees of temporary help firms. *See* Consolidated Findings ## 1 and 3. The provision at issue states, in pertinent part, as follows:

> A temporary employee of a temporary help firm shall be deemed to have voluntarily quit employment if the employee does not contact the temporary help firm for reassignment before filing for benefits and the unemployment benefits may be denied for failure to do so. Failure to contact the temporary help firm shall not be deemed a voluntary quitting unless the claimant has been advised of the obligation in writing to contact the firm upon completion of the assignment.

Under the above provision, and the regulations at 430 CMR 4.04(8), a temporary worker who fails to request a new assignment prior to filing for unemployment compensation is deemed to have quit her employment and will be disqualified from benefits. The Board has interpreted this provision to require communication between the employer and the claimant at or near the end of an

assignment, so that the employer has an opportunity to tender a timely offer of a new assignment to the claimant and thus avoid the claimant's unemployment. *See, e.g.*, Board of Review Decision 0016 0869 84 (March 24, 2016).

On the same day that the employer informed the claimant that her current assignment was set to end, the employer offered the claimant a new assignment. Consolidated Finding ## 10 and 11. Thus, the employer had the opportunity to tender a timely offer of new work to the claimant. In this regard, the claimant's separation is not deemed to be voluntary pursuant to the above provision.

However, the claimant's decision to decline this new assignment is what ultimately severed the parties' employment relationship. *See* Consolidated Findings ## 18, 20, and 21. Therefore, the claimant's eligibility for benefits is properly analyzed under the following provisions of G.L. c. 151A, §§ 25(e), which state, 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 places the burden of proof upon the claimant.

The claimant testified that she resigned her position because she concluded that the new assignment offered by the employer would conflict with her childcare needs, not as a result of any decision made or action taken by the employer. Consolidated Findings ## 17 and 22. As such, 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 rejected as not credible the claimant's contention that she was unable to accept the new assignment because the hours of that assignment conflicted with her childcare needs. *See* Consolidated Finding # 22. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against

Discrimination, 423 Mass. 7, 15 (1996). As the review examiner identified several internal inconsistencies in the claimant's testimony that directly detracted from the credibility of the claimant's statements, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

Consistent with her credibility assessment, the review examiner found that the claimant declined the new assignment because it was inconvenient, as the new location would make it more difficult to drop off her son before work. Consolidated Findings ## 17 and 22. The changes to the claimant's commute may have been inconvenient, but this added inconvenience is insufficient to show that the claimant declined the new assignment for urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(2).

Even assuming *arguendo* that the change to the claimant's longer commute was sufficient to compel her to decline the new assignment, a claimant who resigns from employment must also show that she 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, 66 Mass. App. Ct. at 766, *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–598 (1974). Consistent with this precedent, 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.

At the remand hearing, the claimant conceded that she did not inform the employer of the reason for her separation. Consolidated Findings ## 18, 20, and 25. She further testified that the employer had previously accommodated her need to start her shift later than initially requested for the same reason, to allow her sufficient time to drop her son off at daycare.[1] Thus, her own testimony evidences the employer's willingness to work with the claimant to make certain reasonable accommodations related to childcare. As the claimant offered no explanation for why she did not seek the same accommodations when offered the new assignment, the claimant did not show that she took reasonable steps to preserve her employment or otherwise reasonably believed any such efforts would have been futile.

We, therefore, conclude as a matter of law that the claimant did not show that she quit her employment for good cause attributable to the employer or urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e).

The review examiner's decision is affirmed. The claimant is denied benefits for the week of September 17, 2023, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

[1] The claimant's uncontested testimony in this regard is part of the evidence introduced at the hearing and placed into 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).

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 10, 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.

LSW/rh