

Where the claimant's childcare responsibilities and overnight schedule prevented her from getting sufficient sleep, and a lack of childcare prevented her from accepting the employer's offer of a morning shift, she demonstrated urgent, compelling, and necessitous reasons to resign. The claimant took reasonable steps to preserve her employment when she asked for an evening shift and looked into daycare options that ultimately did not work out. She was not required to request a leave of absence to show reasonable steps to preserve. Held the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**Board of Review**  
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**Issue ID: 0081 2869 94**

#### 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 and filed a claim for unemployment benefits with the DUA, effective October 15, 2023, which was denied in a determination issued on November 3, 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 January 4, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant left her 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 make subsidiary findings of fact from the record pertaining to the claimant's efforts to preserve her employment prior to leaving. 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 did not take reasonable steps to preserve her employment because she did not request a leave of absence prior to quitting, 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. The claimant is married.
2. The claimant's husband works daytime shifts as a painter.
3. As of November 28, 2023, the date of the unemployment hearing, the claimant had a 2-year-old child and was pregnant with her second child. The claimant was due to have her second child on January 8, 2024.
4. Prior to quitting her employment, the claimant initially planned to take a leave of absence from work following the birth of her child on January 8, 2024.
5. From September, 2022 until October 27, 2023, the claimant worked as a full-time (40-48 hours per week) lobby supervisor for the employer, a security company.
6. The claimant's rate of pay was \$21.25 per hour.
7. The claimant reported to the employer's alpha 1 supervisor ([A]).
8. At the time the claimant was hired, she typically worked from 3:00 p.m. until 11:00 p.m. In June, 2023, the claimant switched her schedule to work overnight shifts.
9. The claimant switched her schedule to care for her 2-year-old child. The claimant's work and childcare schedule did not allow her enough time to sleep during her pregnancy because she slept when her child slept during the day.
10. On or about September 30, 2023, the claimant asked [A] if she could transfer to another shift.
11. [A] offered to allow the claimant to transfer to morning shifts.
12. The claimant declined to transfer to morning shifts because she did not have daycare for her 2-year-old child.
13. The claimant called daycares in the town she resided in but decided not to enroll her child in daycare due to their waitlists and expense. The daycares the claimant looked at cost approximately \$400–\$600 per week.
14. The claimant wanted to work a shift from 5:00 p.m. until midnight so that her husband could watch her child.
15. The employer did not have the claimant's desired shift available.
16. On or about September 30, 2023, the claimant decided to quit her employment to search for a job that allowed her to work her desired shift.

17. The claimant initially planned to quit her employment on October 13, 2023. However, the employer required shift coverage on October 27, 2023. The claimant agreed to work for the employer on October 27, 2023, to cover the shift.
18. The claimant did not work any shifts for the employer between October 14, 2023, and October 26, 2023.
19. The claimant worked for the employer on October 27, 2023.
20. On October 27, 2023, the claimant quit her employment.
21. The claimant did not request a leave of absence prior to quitting her employment.
22. The claimant filed a claim for unemployment benefits with an effective date of October 15, 2023.
23. In a fact-finding questionnaire submitted to the Department of Unemployment (DUA) in response to a question asking what reason she gave the employer for quitting, the claimant responded, “I left work because I’m 7 months pregnant and I worked the night shift and because I only slept 2 hours a day. So I decided to leave because it was very difficult and I’m going to look for another job until the baby is born.”

[Credibility Assessment:]

During the hearing, the claimant testified that she decided to quit her employment because she was unable to get enough sleep during her pregnancy while caring for her child and working full-time at night for the employer. However, the claimant further established that although the employer had morning shifts available, she did not transfer to morning shifts because she did not want to place her child in a daycare due to expense and daycare waitlists. The claimant also testified that she did not request a leave of absence to search for more affordable childcare prior to quitting her employment because she did not want to be without income, despite testifying that she had intended to request a leave of absence after the birth of her baby in January, 2024.

### 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 original conclusion is free from error of law. After such review, the Board adopts the review examiner’s consolidated findings of fact except as follows. The portion of Consolidated Finding # 20, which states that the claimant quit her employment on October 27, 2023, is misleading. Consolidated Findings ## 17–18 show that

the claimant stopped working for the employer on October 13, 2023, agreeing only to return for the single shift on October 27, 2023. 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's separation from employment disqualifies her from receiving benefits.

Because the claimant quit her position, her eligibility for benefits is governed by 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.

By its terms, these provisions of the statute specify that the claimant bears the burden to show that she is eligible for unemployment benefits.

Because nothing in the record suggests that the employer did anything unreasonable to cause the separation, the claimant's resignation is not due to good cause attributable to the employer within the meaning of G.L. c. 151A, § 25(e)(1). *See Conlon v. Dir. of Division of Employment Security*, 382 Mass. 19, 23 (1980) (when a claimant contends that 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). Alternatively, we consider whether the claimant's separation was due to urgent, compelling, and necessitous reasons.

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).

"[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 (1992). Medical conditions are recognized as one such reason. *See Dohoney v. Dir. of Division of Employment Security*, 377 Mass. 333, 335–336 (1979) (pregnancy or a pregnancy-related disability, not unlike other disabilities, may legitimately require involuntary departure from work). Further, the Supreme Judicial Court has stated, "[s]ince domestic responsibilities can entitle a claimant to reject certain employment situations as unacceptable and restrict her work availability under § 24(b), we conclude that these same responsibilities also may constitute urgent and compelling reasons which make a resignation involuntary under G.L. c. 151A, § 25(e)(1)."

Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (child-care demands may constitute urgent and compelling circumstances) (citations omitted).

Here, the claimant was working an overnight shift for the employer and caring for her two-year-old child during the day. Consolidated Findings ## 8–9. The claimant’s husband worked daytime hours because he was a painter and was only available to watch their two-year-old child as of 5:00 p.m. Consolidated Findings ## 2 and 14. Because she was working overnight hours and caring for her child during the day, the claimant, who was also seven months pregnant at the time, was unable to get enough sleep during the day, sleeping only two hours. Consolidated Findings ## 9 and 23. The employer offered the claimant a morning shift, but she could not accept it because she did not have childcare during the morning hours, and daycare was too expensive. Consolidated Findings ## 11–13. The employer did not have a shift available that could accommodate the claimant’s availability of 5:00 p.m. to midnight. Consolidated Findings ## 11, and 14–15.

The claimant’s overnight work schedule and daytime childcare responsibilities were preventing her from obtaining the necessary sleep, which we can reasonably assume was detrimental to the claimant’s health, particularly where she was seven months pregnant. Further, the claimant was unable to work the employer’s only other available shift because she did not have childcare during those hours, and enrolling her child in daycare was cost-prohibitive. Based on these circumstances, the claimant has demonstrated urgent, compelling and necessitous reasons to leave her job.

However, our inquiry does not stop here. “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, 66 Mass. App. Ct. at 766, *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–98 (1974).

The review examiner determined that the claimant did not make a reasonable effort to preserve her employment because she did not request a leave of absence prior to quitting. We disagree with this conclusion. To be eligible for benefits, an employee is expected to make reasonable attempts to preserve her employment but is not required to request a transfer to other work or a leave of absence. Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). The consolidated findings show that the claimant took reasonable steps to remain employed prior to quitting. She first asked the employer to change her schedule to accommodate her availability, but the employer was unable to offer her a suitable shift. Consolidated Findings ## 10–12. Further, the claimant also researched daycares but found that, in addition to having waitlists, they were too expensive. Consolidated Finding # 13.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she involuntarily resigned from the employer due to urgent, compelling, and necessitous circumstances, and she is eligible for benefits pursuant to 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 October 15, 2023, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - September 27, 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.

SVL/rh