

Given his court-ordered obligations to pay child-support and health insurance, the claimant could not afford to live in a place of his own. He resigned after seven years of homelessness when his brother in Florida offered him a room in his house because the person renting out a room had moved out. Held the claimant left his job due to urgent, compelling, and necessitous reasons and was eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

**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 3814 11

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 his position with the employer on October 25, 2023. He filed a claim for unemployment benefits with the DUA, effective October 22, 2023, which was approved in a determination issued on December 21, 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 January 25, 2024. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without establishing good cause attributable to the employer or urgent, compelling, and necessitous reasons and, thus, he 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 afford the claimant an opportunity to participate in the hearing. Both parties attended the remand hearing.¹ Thereafter, the review examiner issued his 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 have urgent, compelling, and necessitous reasons to leave his job, is supported by substantial and credible evidence and is free from error of law, where, after remand, the record shows that the claimant was homeless and left his job so he could live with his brother in Florida.

Findings of Fact

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

¹ At both the original and remand hearings, only the employer's agent appeared on behalf of the employer.

1. On 5/1/21, the claimant began working full-time as a Case Manager and then a Counselor for this employer's social services company. The claimant asked to become a Counselor so that he would be able to earn overtime pay that Case Managers are not eligible to receive.
2. On 10/11/23, the claimant gave notice that he was resigning with an effective end date of 10/25/23. The claimant worked through his notice period.
3. The claimant, at the time of his resignation, had been homeless for approximately 7 years. The claimant had been working with the VA homeless programs and he had been living in his car and with various friends since 2016. The claimant's homelessness situation was common knowledge in the employer's workplace.
4. The claimant's supervisor knew that the claimant resigned to move to Florida to live with his brother because of the claimant's homelessness situation.
5. The claimant's job was not in any jeopardy had he not resigned, and the claimant had no issues with this employer and he would have stayed in the job but for his homelessness issues.
6. On 10/30/23, the claimant filed a claim for unemployment benefits effective 10/22/23. The claimant reported to DUA that he left because he was homeless, and his income was not enough to secure local housing.
7. The claimant's monetary [sic] showed base period wages of \$69,194.44.
8. The claimant has a court ordered child support obligation of \$330.00 per week and health insurance which led to his inability to afford his own housing.
9. The claimant has sought a reduction in his child support payments, but his request was denied.
10. On 12/21/23, the employer was sent a Notice of Approval, beginning 10/22/23, noting that the claimant had left employment for urgent, compelling, and necessitous reasons. The employer requested a hearing.
11. The employer attended the initial hearing represented by its agent. The claimant did not attend the initial hearing because his cellular telephone had been shut off due to non-payment at the time of the initial hearing.
12. On 1/25/24, a Decision was issued reversing the initial determination that the claimant had left employment involuntarily for urgent, compelling, and necessitous reasons.
13. The claimant filed an appeal to the Board of Review.

Credibility Assessment:

The testimony of the claimant was accepted by this Review Examiner as credible, because it was consistent with the evidence, and was unrefuted by the employer at the time of the remand hearing.

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. However, based upon the consolidated findings, we disagree with the review examiner's legal conclusion that the claimant is ineligible for benefits, as outlined below.

Because the claimant resigned from his employment, we analyze his eligibility for benefits pursuant to the following provisions under 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 . . . [or] if such individual established to the satisfaction of the commissioner that his reasons for leaving were of such an urgent, compelling and necessitous nature as to make his separation involuntary. . . .

The express language of these provisions assigns the burden of proof to the claimant.

Inasmuch as nothing in the record suggests that any employer action caused the claimant to resign, we agree that the claimant has not established good cause attributable to the employer to leave his job. 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).

However, the record does show that he left 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.

The Board has held that losing housing may constitute urgent, compelling, and necessitous circumstances for leaving employment, provided the claimant shows that he could not find alternative housing in the area or that he could not afford to stay in the area. *See* Board of Review Decision 0061 6971 29 (Dec. 27, 2022); and Board of Review Decision BR-107914 (Jan. 14, 2009).

The circumstances in this case are similarly compelling. The claimant lost his housing in 2016, and he had been living with various friends or in his car for nearly seven years. *See* Consolidated Finding # 3. It is self-evident that having a place to live is a basic necessity of life. As for his urgent need to leave his employment in October, 2023, the claimant explained that his brother in Florida had someone renting out a room in his house who moved out, so his brother offered to let the claimant come stay with him.² Given his court ordered obligation to pay \$330.00 per week in child support as well as half of the cost of health insurance, the expenses of maintaining a car to get to work, and buying food and clothing, it is reasonable to infer that he could not afford his own housing on his annual \$69,194.44 gross salary. *See* Consolidated Findings ## 7 and 8. We are satisfied that the claimant acted reasonably, based on pressing circumstances, in leaving his employment.

Our analysis does not end there. “Prominent among the factors that will often figure into 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).

In this case, the claimant had already tried but could not get his child-support payments reduced. Consolidated Finding # 9. He testified that he further tried but could not get permanent housing through the Veterans Administration, had lived with someone on subsidized housing who could not let him stay, and was already working two jobs. He had also unsuccessfully applied for higher paying jobs with the employer, and he picked up overtime. Still, he could not afford his own place. Given these facts, the claimant has shown that he made reasonable efforts to preserve his employment before resigning.

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he left his job involuntarily due to urgent, compelling, and necessitous circumstances within the meaning of G.L. c. 151A, § 25(e)(1).

² While not explicitly incorporated into the review examiner’s findings, this portion of the claimant’s testimony as well as the testimony referenced below 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).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning October 22, 2023, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2024



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano 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.

AB/rh