

The claimant had an urgent, compelling and necessitous reason to leave his employment when he suddenly became the primary caregiver for his elderly parents until he could make arrangements for their full-time care. However, he is not eligible for benefits under G.L. c. 151A, § 25(e)(1), because he failed to take any steps to preserve his employment or show that such efforts would have been futile. He simply failed to return to work and did not contact the employer again.

**Board of Review
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Issue ID: 0082 3993 83

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 resigned from his position with the employer on February 26, 2024. He filed a claim for unemployment benefits with the DUA, effective March 10, 2024, which was denied in a determination issued on April 20, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on May 31, 2024. 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 evidence pertaining to the claimant's caretaker responsibilities. Both parties 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 failed to take reasonable steps to preserve his employment, is supported by substantial and credible evidence and is free from error of law, where the claimant, who became his parents' primary caregiver, stopped reporting to work and never contacted the employer again.

Findings of Fact

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

1. The claimant worked as a full-time manager in training for the employer, a convenience store, from February 12, 2024, until February 26, 2024, when he separated.
2. The claimant's direct supervisor was the district manager (district manager).
3. On February 19, 2024, the claimant's sister (sister) died in a car accident.
4. The claimant worked his shift on February 19, 2024.
5. After his shift on February 19, 2024, the claimant contacted the district manager after his shift [sic] to tell him about his sister's death.
6. The claimant had the district manager's cell phone number and communicated with him via text.
7. The district manager informed the claimant that he could take bereavement leave per company policy due to the death of his sister for the rest of the week.
8. The claimant agreed to take the time off.
9. The claimant used the time off to make funeral arrangements and to take care of his elderly parents.
10. Immediately after his sister's death, the claimant became the primary caretaker for his two elderly parents, who are in their eighties. The claimant's sister lived in the same household as the claimant's parents at the time that she died and was their caretaker.
11. The claimant's father has a history of kidney cancer and the claimant's mother has ulcerative colitis. The claimant's parents do not drive due to their age.
12. The claimant's caretaker duties for his parents included taking his father to medical appointments, grocery shopping, taking his mother to appointments, food preparation, cooking, helping his father get dressed, assisting his father getting in and out of the shower, and assisting his mother with housekeeping tasks.
13. The claimant's father walks with a cane and is a fall risk. The claimant's father has fallen multiple times.
14. When the claimant's sister died, the claimant was at his parents' house every day for the majority of the day for a month helping them with daily tasks, getting his sister's affairs in order, and adjusting to life without the claimant's sister.

15. The claimant also dedicated a lot of time to finding a program to arrange for personal care assistants to come into his parents' home to assist with care, which was an extensive application process.
16. On February 23, 2024, the claimant and the district manager exchanged text messages about the claimant returning to work.
17. In the February 23, 2024, text message exchange, the claimant agreed to return to work for the employer on February 26, 2024.
18. The claimant initially told the district manager that he would be returning to work on February 26, 2024, because the claimant's niece was going to come home and help care for the claimant's parents.
19. The district manager expressed that he was glad that the claimant was okay and made preparations for the claimant to resume his training on February 26, 2024.
20. After the claimant's niece agreed to come home and take care of the claimant's parents, the claimant's niece called the claimant and said that she could not get the leave time approved and would not be coming home.
21. The claimant did not appear for his scheduled shift on February 26, 2024, because he was going to be the only person taking care of his parents full-time for the foreseeable future.
22. The claimant did not contact the district manager about being absent on February 26, 2024, because he did not know how long he would need to get his parents settled into a new routine.
23. The claimant did not contact the district manager about any type of additional leave that may have been available to the claimant.
24. The district manager would have worked with the claimant on arranging for paid or unpaid leave, if the claimant had contacted him about needing additional time off to take care of his personal matters.
25. On February 26, 2024, the claimant quit his job with the employer to take care [of] his parents after his sister's death. The claimant did not apply for a leave because he did not know how long he would have to be out of work to take care of his parents.
26. The claimant never contacted the employer after February 26, 2024.
27. The employer has a human resources department.

28. The claimant did not contact the employer's human resources department to see if any additional leave was available to him because he did not know how long he would need to be out of work.
29. The claimant was at his parents' house every day following his sister's death, helping them with daily tasks and assisting with getting his sister's affairs in order.
30. As of February 26, 2024, through March, 2024, the claimant was not available for full-time or part-time work for approximately the one month after his sister's death.
31. The claimant became available for part-time work around April 1, 2024, because he was still helping his parents with tasks, but had settled his parents to the point where he did not have to go every day to provide care.
32. In May, 2024, the claimant obtained full-time personal care assistants for his parents, which helped with the amount of caretaking the claimant and [sic] to do for his parents and freed the claimant's time to work.
33. The claimant became available for full-time work on May 1, 2024, when he was able to arrange for personal care assistants to come into his parents' home daily.
34. Based on his parents' health and needs, the claimant did not know how long he would need to take off from work to take care of his parents and get them settled with proper care.

Credibility Assessment:

Although the claimant did not provide medical documentation related to his parents' illnesses, the claimant did read an email into the record written by his mother. The claimant and the employer did not dispute any facts about the scope of the claimant's care of his parents. As such, the claimant's testimony related to the scope and indefinite nature of his care for his parents is accepted as 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. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 33, which states that the claimant became available for full-time work on May 1, 2024, as the claimant testified during the remand hearing that he became available for full-time work approximately at the end May, beginning of June.¹ In

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

adopting the remaining findings, we deem 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.

Because the claimant quit his position, his 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, the statute specifies that the claimant bears the burden to show that he 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). 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). Domestic responsibilities are recognized as one such reason. "Since 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 became his elderly parents' primary caregiver when his sister passed away in a car accident on February 19, 2024. Consolidated Findings ## 3 and 10. The claimant's parents required daily care due to their age, inability to drive, and medical conditions. Consolidated Findings ## 11 and 29. Specifically, the claimant's father has a history of kidney cancer, and he walks with a cane and is a fall risk, and his mother has ulcerative colitis. Consolidated Findings

11 and 13. The claimant assisted his parents with tasks, such as grocery shopping, food preparation, dressing, and driving them to medical appointments. Consolidated Finding # 12. Because the claimant needed to be available to care for his parents, essentially on a full-time basis, he was not available for work at the time of his separation, February 26, 2024. Consolidated Findings ## 1, 14, and 30. Based on these circumstances, the claimant has demonstrated urgent, compelling and necessitous reasons to leave his 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 [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, 597–98 (1974).

The review examiner determined that the claimant did not make a reasonable effort to preserve his employment, because he stopped reporting for work and never contacted the employer again. Consolidated Findings ## 21–22, and 26. We agree. The claimant was scheduled to return to work on February 26, 2024, after taking a week of bereavement leave. Consolidated Findings ## 7, and 18–19. However, the claimant was unable to resume working on that date because he needed more time to arrange for full-time care for his parents, and he would be taking care of them until he could make such arrangements. Consolidated Findings ## 20–21. At that time, the claimant did not know how long he would be out of work caring for his parents while he arranged for other care. Consolidated Finding # 34.

The claimant argued that he did not contact the employer on or after February 26, 2024, to request a leave of absence or other type of accommodation, because he did not know how long he would need time off from work to arrange for his parents’ care. Consolidated Findings ## 22–23, 25, and 26–28. We can reasonably infer from these findings that the claimant did not take any steps to preserve his employment, because he did not believe that the employer would hold his position while he made arrangements for his parents’ care. However, the claimant has not presented any evidence to show that his belief was reasonable, and that efforts to preserve his employment would have been futile. *See* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 93–94 (1984). Because he failed to speak to the employer about his options, he could not have known whether the employer would have held his position. In fact, contrary to the claimant’s belief, the employer testified that, had the claimant requested more time off, the district manager would have worked with him to arrange for paid or unpaid leave. Consolidated Finding # 24.

We, therefore, conclude as a matter of law that the claimant has not met his burden to show that he involuntarily resigned from the employer due to good cause attributable to the employer or urgent, compelling, and necessitous circumstances pursuant to G.L. c. 151A, § 25(e).

The review examiner’s decision is affirmed. The claimant is denied benefits for the week beginning February 25, 2024, 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 - October 28, 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

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