

The claimant's post-concussion syndrome made it difficult to perform his physical job duties, even on a part-time basis while on intermittent leave. Given the evidence showing that he could no longer perform manual labor and that a transfer was not available, his belief that there was nothing else he could do to remain employed was reasonable. He demonstrated urgent, compelling, and necessitous reasons to resign and is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

**Board of Review
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Issue ID: 0082 4952 52

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 January 26, 2024. He filed a claim for unemployment benefits with the DUA, effective March 24, 2024, which was approved in a determination issued on May 30, 2024. 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 June 26, 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 give the claimant an opportunity to testify and provide other evidence. Only the claimant attended the remand hearing. 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 voluntarily left employment without good cause attributable to the employer or urgent, compelling, and necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where the claimant resigned because he was no longer physically able to perform his job duties.

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 full-time as [a] greens laborer, head of maintenance, and mechanic for the employer, a country club, from January 27, 2014, until January 26, 2024.
2. The claimant's supervisors were the vice president and the superintendent of the golf course.
3. The claimant worked approximately 40 hours per week.
4. The claimant earned \$26.00 per hour.
5. From approximately August, 2023 to January 26, 2024, the claimant took an intermittent Family and Medical Leave Act (FMLA) leave of absence due to medical issues. The claimant reduced his schedule to three days per week.
6. The claimant was experiencing post-concussion syndrome from prior bad concussions.
7. The claimant's medical condition caused him to feel dizzy and nauseated from bending, lifting, and walking.
8. In approximately December, 2023, the claimant's physician told him that he should consider retiring due to his medical condition.
9. Approximately one week prior to January 26, 2024, the claimant gave notice to the general manager that he was retiring effective January 26, 2024.
10. The claimant did not request a full leave of absence prior to quitting.
11. The claimant did not request any work accommodation prior to quitting. The claimant did not believe that any work accommodation would help given his medical condition.
12. The claimant was not at risk of being fired.
13. The employer had work available for the claimant.
14. On January 26, 2024, the claimant quit his job.
15. The claimant was not physically capable of working at the time he quit. The claimant was unable to lift, bend, walk, or drive for the periods required to perform his usual work.
16. Following the claimant's quit, the claimant continued his FMLA as a full-time leave of absence. The claimant was paid for a full-time FMLA leave from January 26, 2024, until approximately March, 2024.

17. In approximately April, 2024, the claimant applied for Social Security disability.

18. As of August 15, 2024, the remand hearing date, the claimant was not physically capable of working.

Credibility Assessment:

The claimant did not attend the initial hearing. The claimant attended the remand hearing. The human resources manager attended the initial hearing on behalf of the employer. The employer did not attend the remand hearing.

The parties separately gave testimony that was in agreement on all relevant facts.

The claimant admitted that he did not request an extension of his leave of absence, did not request work accommodation [sic], and did not request a transfer to a different position. The claimant admitted that he did not attempt to preserve his employment because he believed that he would never be able to return to his position given his medical condition. The claimant testified that he was not currently physically capable of working due to his medical condition.

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, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant's separation was disqualifying.

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.

The record does not indicate that the claimant left his employment as a result of any action taken by the employer. We, therefore, need not consider whether the claimant had good cause for leaving attributable to the employing unit or its agent under G.L. c. 151A, § 25(e)(1). Alternatively, we consider whether the claimant resigned as a result of 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). Given the claimant's documented medical condition of post-concussion syndrome, which rendered him incapable of performing his manual labor work duties with the employer, the claimant has demonstrated urgent, compelling, and necessitous reasons to leave his job. Consolidated Findings ## 6–7, and 15; Exhibit # 1 (Health Care Provider's Statement of Capability, May 9, 2024).

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 consolidated findings show that the claimant took reasonable steps to preserve his employment prior to quitting in January, 2024. He tried to remain employed by taking an intermittent leave of absence beginning in August, 2023, and working as many days as he could (three days per week), even as his job duties continued to exacerbate the symptoms of his medical condition. Consolidated Findings ## 5, and 7–8. The claimant did not request a full leave of absence or a transfer or other accommodation prior to quitting, as he did not believe that a further accommodation would help his medical condition. *See* Consolidated Findings ## 10–11. The findings and the totality of the record show that the claimant's belief that there was nothing else he could do to remain employed was reasonable. His position was physical in nature, and he could no longer perform manual labor at the time he resigned. Further, the employer testified during the initial hearing that a transfer was not available to the claimant.¹

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).

We, therefore, conclude as a matter of law that the claimant has met his burden to show that he involuntarily resigned from the employer due to urgent, compelling, and necessitous circumstances, and he is eligible for benefits pursuant to G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning January 21, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 26, 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