Where the employer changed the claimant's schedule and his new hours interfered with his childcare responsibilities, the claimant had an urgent, compelling and necessitous reason to quit his employment. Further, the claimant took reasonable steps to preserve his employment when he requested a transfer or a different schedule, but the employer was not able to accommodate his request. Held the claimant is eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

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Issue ID: 0082 5829 46

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 separated from his position with the employer on April 19, 2024. He filed a claim for unemployment benefits with the DUA, effective April 7, 2024, which was approved in a determination issued on July 2, 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 August 14, 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 present additional evidence. Both parties attended the remand hearing. We subsequently remanded the case a second time to obtain additional evidence pertaining to the claimant's schedule and domestic responsibilities. Both parties attended the second 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 voluntarily quit without good cause attributable to the employer or urgent, compelling, or necessitous reasons, is supported by substantial and credible evidence and is free from error of law, where, after remand, the review examiner found that the claimant's new schedule interfered with his childcare responsibilities.

Findings of Fact

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

1. The claimant worked full-time as a Truck Driver for the employer, a trucking company, from November 6, 2023, through March 21, 2024.

2. The claimant has three children, age[s] 15, 13 and 11.

3. While employed by the employer, the claimant was subject to a custody agreement with the claimant's former spouse. The claimant and the children's mother had a 50/50 custody agreement. The claimant and the children's mother alternated weeks of custody.

4. The claimant's work for the employer started between 1:00 a.m. and 4:00 a.m., Monday through Friday and every other Saturday for the employer. The claimant's work ended between 12:00 p.m. and 2:00 p.m. each work day.

5. The claimant would pick up his children from school when he completed work each day on the weeks that he had custody.

6. On February 26, 2024, the claimant hit a parked box truck with the lift gate of the trailer while driving for the employer.

7. On or about March 9, 2024, the claimant had a critical safety event while driving for the employer when he had a hard brake. The claimant told the employer that he was trying to make a U-turn which caused the hard brake.

8. After the first critical safety event, the employer had the claimant train with another driver for one week.

9. On or about March 20, 2024, the claimant had a critical safety event while driving for the employer when he fell asleep while driving, causing a hard brake.

10. On or about March 20, 2024, the claimant met with the employer regarding being tired during his shift.

11. The claimant was tired during his shifts with the employer because trucks were not available for the claimant to drive when he arrived at work. The claimant was required to wait between one to three hours for an available truck.

12. One client for the employer also required the truck drivers to arrive at the employer's site one hour prior to driving. If a truck was not available for the driver, this also lengthened the time the driver had to wait before starting the route.

13. Because the claimant's workday was lengthened by waiting for an available truck, the claimant often worked a 14–18 hour day.

14. The claimant would have to wait for an available truck one to three times per week.

15. The claimant was told by the employer when he needed to arrive at work the day before. The time frame of when the claimant had to arrive at work was based on the customer and the route.

16. The claimant was never notified before arriving at work that a truck would not be available.

17. The employer knew that the truck drivers' shifts were extended beyond 12–14 hours due to the wait times for the trucks.

18. The wait times for trucks was due to the return time of the truck drivers, and the time needed for the maintenance and upkeep of the trucks by the employer.

19. The employer did not know that the claimant was tired and fatigued at work until the second critical event.

20. The truck drivers managed their own hours for the Department of Transportation.

21. The Department of Transportation requires that drivers not exceed 11 hours of consecutive driving without a break and requires a rest after 14 hours of driving.

22. The claimant had two accidents and two critical events while working for the employer as a truck driver. After the second critical safety event, the employer required the claimant to do training and to switch jobs.

23. On or about March 21, 2024, the employer offered the claimant shuttle work which started between 5:00 p.m. to [sic] 7:00 p.m. and ended between 4:00 a.m. to [sic] 5:00 a.m.

24. The employer wanted the claimant to work the shuttle job for three months.

25. After the claimant worked the shuttle job for three months, the employer would review the claimant's job performance to see if the claimant could return to his previous truck driver position.

26. The claimant was unable to do the shuttle work because the start and end times conflicted with his responsibilities to his children and the custody agreement.

27. Based on the custody agreement, the claimant was supposed to pick up the children from school on Mondays, Wednesdays and every other Friday. The claimant had his children for every other weekend.

28. The claimant's children would get themselves off to school in the mornings.

29. The start time of 5:00 p.m. or 7:00 p.m. interfered with the claimant's time picking the children up from school, making dinner with them, spending time with them in the evening and putting them to bed at night. The claimant was able to do these things with his children when his workday started between 1:00 a.m. and 4:00 a.m.

30. With a start time of 5:00 p.m. and 7:00 p.m., the claimant would spend less time with his children on Monday, Wednesday and every other Friday evenings.

31. With a start time of 5:00 p.m. and 7:00 p.m., the children would be alone and unattended on Monday, Wednesday and every other Friday evening.

32. On or about March 25, 2024, the claimant had a phone conversation with one of his supervisors (the Driver Manager) asking if there were other opportunities to work for the employer within the timeframes he was hired to work. The Driver Manager told the claimant that he (the Driver Manager) would reach out to the Logistics Coordinator and the Driver Supervisor regarding options.

33. The Driver Manager called the claimant on March 25, 2024, and told him that the shuttle work with a 6:00 p.m. start time was the only job available to the claimant. The claimant asked the Driver Manager if there was any work for him out of a different work area. The Driver Manager told the claimant he would get back to him.

34. Between March 26, 2024, and April 1, 2024, the claimant called the Logistics Coordinator but did not speak to her.

35. The Logistics Coordinator texted the claimant on April 1, 2024, to find out why he had not been coming to work.

36. On April 1, 2024, the claimant texted the Logistics Coordinator, "Good Evening, I had PTO Thursday & Friday and it was my Saturday off so maybe that's why. [Name] gave me a call during the week to let me know that 6pm start times was the only thing available. I asked him if there was anything out of [Location] for me and he said he'd get back to me. Unfortunately, 6pm start time doesn't work for my family and I. Otherwise I'd have no issue with it. Please call me when you can."

37. At some point after April 1, 2024, the Driver Manager contacted the claimant and told him there was no work available in a different work area.

38. The claimant texted the Logistics Coordinator on April 2, 2024, "Please let me know what the plan is moving forward."

39. On April 3, 2024, the Logistics Coordinator texted the claimant, "(The Driver Supervisor) is okay with the schedule change but we still need to get this ride along completed. Let me know what you want to do."

40. Later on April 3, 2024, the Logistics Coordinator texted the claimant, "Please ensure the following trainings are complete by April 10th." The Logistics Coordinator added a screen shot of trainings in the text to the claimant.

41. On April 4, 2024, the claimant texted the Logistics Coordinator, "I apologize for not getting back to you sooner. I discussed it with my family and evening start times won't work for me. I can do the hours I was hired for which was 1-4 am, or even later 4-8am. I do have my updated license. I can send you the front and back. And I'll complete the training."

42. The Logistics Coordinator checked with two other locations and there were no positions available for the claimant.

43. Sometime after April 1, 2024, the claimant spoke to the Driver Supervisor. The Driver Supervisor told the claimant that he was required to work the shuttle hours. The claimant was told by the Driver Supervisor that he would be terminated from his job with the employer if he did not work the shuttle job.

44. The Driver Supervisor is senior to the Logistics Coordinator and the Driver Manager.

45. The claimant filed for unemployment benefits with an effective date of April 7, 2024, because he did not hear back from the Logistics Coordinator, and the Driver Supervisor told him that if he could not work the hours of the shuttle job he would be terminated from his job.

46. On April 8, 2024, the Logistics Coordinator texted the claimant, "Good afternoon. So those time frames you were hired for are for load deliveries. Doing shuttles during those time (sic) will be very rare and effect your money negatively."

47. The employer did not have a job for the claimant during the time frames he was hired to work.

48. The employer wanted to keep the claimant as an employee.

49. The employer terminated the claimant's employment on April 19, 2024, because he did not return to work.

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. We set aside the portion of Consolidated Finding # 21 that states that the DOT requires drivers to rest after 14 hours of *driving*, as the evidence reflects that a rest is required after 14 hours on duty.[1] 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 original legal conclusion that the claimant is not eligible for benefits.

Because the claimant quit his position when he stopped showing up for work, 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, these provisions of the statute specify 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) (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

[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).

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 [his] 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 a shift with a start time between 1:00 a.m. and 3:00 a.m., which allowed him to pick his minor children up from school, in addition to making their dinner and putting them to bed in the afternoon and evening hours, respectively. Consolidated Finding # 29. The claimant's childcare responsibilities were part of a child custody agreement. Consolidated Finding # 3. After the claimant fell asleep at the wheel of the employer's truck due to exhaustion on or about March 20, 2024, the employer temporarily changed the claimant's job duties and schedule pending a reevaluation. Consolidated Findings ## 9, 22–23, and 25. The new schedule had a start time between 5:00 p.m. and 7:00 p.m., which interfered with the claimant's childcare responsibilities. Consolidated Findings ## 23 and 26. 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).

In the original decision, the review examiner determined that the claimant did not make any efforts to preserve his employment. However, after hearing the claimant's testimony and reviewing his documentary evidence during the remand hearings, the review examiner found that the claimant explained to the employer that the new schedule did not work for him given his family circumstances. Consolidated Findings ## 36 and 41. The claimant further asked the employer if there was another location to which he could transfer or a different start time. Consolidated Findings ## 36 and 41. However, the employer notified the claimant that there were no alternative locations or start times. Consolidated Findings ## 33, and 36–37. These consolidated findings show that the claimant took reasonable steps to remain employed prior to quitting, but the employer was unable to offer him a suitable shift. Consolidated Findings ## 42–43, and 47.

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)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending April 20, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 25, 2025

Paul T. Fitzgerald, Esq.
Chairman

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.

SVL/rh