The claimant resigned when she refused to adhere to the employer's attendance policy and abruptly walked out of a meeting. She did not show that she was compelled to resign because she did not provide evidence showing that taking her mother to medical appointments interfered with her ability to work. Since the claimant did not request time off in accordance with the employer's policies and did not explore the feasibility of FMLA, she did not take steps to preserve her job. Held the claimant separated without good cause attributable to the employer or urgent, compelling, and necessitous reasons under 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: 0082 9048 67

Introduction and Procedural History of this Appeal

The employer 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 separated from her position with the employer on May 29, 2024. She filed a claim for unemployment benefits with the DUA, effective June 2, 2024, which was approved in a determination issued on August 30, 2024. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits attended by both parties, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on October 3, 2024.[1] We accepted the employer's application for review.

Although benefits were denied, the review examiner's decision states that the claimant did not engage in deliberate misconduct in wilful disregard of the employer's interest or knowingly violate a reasonable and uniformly enforced rule or policy of the employer and, thus, was not disqualified under G.L. c. 151A, § 25(e)(2). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal, we remanded the case to the review examiner to obtain subsidiary findings of fact pertaining to the reason for the claimant's separation. 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 understand that her previous absences were contrary to the employer's expectations because her supervisor had permitted her to take time off without three weeks' notice, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

[1] Although the DUA's record-keeping system, UI Online, shows that the claimant was disqualified, the review examiner mistakenly wrote in the final section of her decision that that the claimant was entitled to benefits. For this reason, the employer appealed the hearing decision to the Board.

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 security officer for the employer, a security company, between December 22, 2023, and May 29, 2024, when she separated from employment.

2. The claimant's immediate supervisor was the security lieutenant (lieutenant).

3. The claimant regularly worked the 3:00 p.m. to 11:00 p.m. shift.

4. The employer maintains an "insubordination" policy (the policy), which requires employees to follow the chain of command in the company's structure and to follow the rules and regulations of the company and her direct supervisors and management.

5. The purpose of the policy is to maintain order and to ensure everyone is working and treated fairly.

6. A violation of the policy results in disciplinary actions up to termination.

7. The claimant was made aware of the policy when she received the employee handbook at the time of hire and signed an acknowledgement of receipt dated in December 2023.

8. The employer expected the claimant to follow the company's policies and procedures by requesting time off three (3) weeks in advance.

9. The purpose of the expectation is to maintain order and ensure that all employees are treated fairly.

10. A violation of the expectation could result in termination.

11. The claimant was made aware of the expectation at the time of hire when she received the employee handbook containing the expectation. The claimant was also informed of the expectation on May 29, 2024, in a meeting with the administrative lieutenant and the chief.

12. The employer's attendance policy states three (3) unexcused absences in a quarter rises to the level of excessive absenteeism, which will not be tolerated.

13. The company policies require employees to request time off as needed three (3) weeks in advance.

14. The claimant often had to take her mother and son to doctor's appointments, which were not scheduled three (3) weeks in advance.

15. The mother's and son's doctor's appointments were scheduled during the day.

16. On several instances, the claimant spoke to the lieutenant about the need to call out of work for her next scheduled shift for doctor appointments. The lieutenant responded, "OK" to the claimant when she informed him.

17. The lieutenant also informed her to bring a note from the doctor's appointments and they would be excused.

18. The claimant submitted notes from the doctor's appointments several times in the past and was not disciplined for not requesting the time off three (3) weeks in advance.

19. The claimant provided doctors notes for her absences on May 20, 2024, May 22, 2024, and May 24, 2024, as requested by her lieutenant. Each note indicated the claimant accompanied the patient to their doctor's appointment.

20. On May 29, 2024, the claimant met with the administrative lieutenant in person and the chief via telephone to discuss the claimant's absences and failure to follow the attendance policy.

21. The administrative lieutenant and chief counseled the claimant and issued her a final warning requiring that the claimant follow the company's attendance policy and procedures regarding absences, including not calling out of a scheduled shift.

22. The claimant refused to sign the counseling/final warning form because she knew she had another doctor's appointment for her mother that upcoming Wednesday, June 5, 2024, which she would need to call out of work to attend.

23. The claimant had not submitted a request for June 5, 2024, off three (3) weeks in advance as required by the employer because it was scheduled four (4) to seven (7) days prior.

24. During the May 29, 2024, meeting, the chief offered family medical leave (FMLA) to the claimant, which would enable her to care for her mother and son. The claimant did not accept the FMLA as an option to continue to take her mother and son to their appointments.

25. The claimant did not submit a formal request or a verbal request for June 5, 2024, off prior to the May 29, 2024, meeting.

26. The administrative lieutenant and the chief informed the claimant she was being insubordinate by not signing the counseling/final written warning and the claimant acknowledged such.

27. On May 29, 2024, the claimant was discharged from employment for being insubordinate and not signing the counseling/final warning form and admitting she was not going to follow the attendance policy in the future.

Credibility Assessment:

The employer's witness's testimony that employees are required to formally request time off three (3) weeks in advance is deemed to be credible. Both the employer witnesses provided consistent sequestered testimony regarding the requirement to formally request time off three (3) weeks in advance. Further, the claimant provided testimony that she was aware of the employer's requirement to do so. Therefore, the employer's testimony that the employer requires employees to request time off three (3) weeks in advance is deemed to be credible.

The employer's testimony that the chief offered her family medical leave (FMLA) during the May 29, 2024, meeting is deemed to be more credible than the claimant's testimony that FMLA was not offered to her, but that she was asked if she knew what it was. The employer's testimony is deemed to be more credible because both the employer's witnesses, who were both present at the meeting on May 29, 2024, presented consistent sequestered testimony that the chief offered the claimant the FMLA leave during the meeting.

Also, in support of the claimant's allegation that she was not offered the FMLA, the claimant testified that had she been offered the FMLA, she would have taken it because she loved her job, did not want to leave, and wanted to stay there. Such testimony is not accepted as credible, however, because the claimant worked the 3:00 p.m. to 11:00 p.m. shift and the claimant's appointments for her mother and son were during day hours. It was unreasonable for the claimant not to have ensured the appointments were scheduled prior to her shifts to ensure her ability to both work and take her mother and son to their required appointments. Given that the claimant did not act reasonably in attempting to ensure the appointments were scheduled prior to her working shift, the claimant's testimony that she would have accepted the FMLA offer if it was offered to her is not credible when there were other reasonable steps the claimant could have made, but did not, to ensure her employment.

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 Consolidated Finding # 27 as inconsistent with the evidence in the record. In 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. As discussed more fully below, we conclude that the claimant is not entitled to benefits.

The review examiner found that the claimant was discharged from her employment because she was insubordinate in refusing to sign a warning and refusing to comply with the claimant's attendance policies. While the employer's administrative lieutenant and chief informed the claimant that her refusal to sign the warning was insubordinate during the May 29th meeting, nothing in the records indicates that, at that point, the employer intended to discharge the claimant. *See* Consolidated Finding # 26.

When the claimant first refused to sign the warning, the employer's executive director, who also participated in the meeting, informed the claimant that she would not be able to continue working for the employer if she refused to adhere to the employer's attendance policies.[2] The claimant acknowledged this, reiterated that she would not be signing the warning, and would not follow the employer's attendance policy in the future. The lieutenant offered further undisputed testimony that the claimant then left the meeting. *See* Consolidated Findings ## 22 and 26. Thus, it was the claimant who severed the employment relationship when she chose to walk out of the May 29th meeting.

Because the claimant ended the employment relationship, her eligibility for benefits is properly analyzed as a resignation under the following provisions of 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 for such an urgent, compelling and necessitous nature as to make his separation involuntary.

The explicit language in G.L. c. 151A, § 25(e)(1), places the burden of persuasion on the claimant.

To analyze whether a 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. *See* Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Here, the claimant refused to sign the employer's written warning and ultimately left the May 29th meeting because she intended to call out of work again on June 5, 2024. Consolidated Finding# 22. Inasmuch as the claimant's decision to leave the meeting was based on her personal responsibilities to her family, this does not show she resigned for good cause attributable to the employer.

We next consider whether the claimant showed that she separated from her position with the employer for urgent, compelling, and necessitous reasons. "[A] 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons

[2] While not explicitly incorporated into the review examiner's findings of fact, this portion of the employer's testimony as well as its testimony referenced below are part of the unchallenged evidence introduced at the hearing and placed into the record, and they are 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).

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 v. Comm'r of Department of Employment and Training, 412 Mass. 845, 847 (1992). Domestic responsibilities, such as the need to provide care for a family member, may be sufficient to show such urgent and compelling circumstances as to render a claimant's separation involuntary. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted).

The claimant provided medical notes from May 20, 2024, May 22, 2024, and May 24, 2024, to corroborate her testimony that she was responsible for bringing her mother to ongoing medical appointments. Consolidated Findings ## 14, 19, and 22. However, as the review examiner noted in her credibility assessment, the claimant had conceded that these appointments were scheduled early in the morning, which were well before the start of her shift. *See* Consolidated Findings ## 3 and 15. Moreover, the three medical notes, which were admitted into evidence as Exhibits 1, 2, and 3, confirm that the claimant took her mother to treatment for bilateral knee pain but they make no reference to the claimant's mother having any medical restrictions or requiring post-treatment care.[3] Absent evidence supporting the claimant's assertion that she had to care for her mother for the remainder of the day after each appointment, the claimant did not show that her caregiving responsibilities prevented her from reporting for her scheduled shifts, or that they caused her to resign.

Even assuming *arguendo* that the claimant's caregiving responsibilities did rise to the level of urgent, compelling, and necessitous reasons for resigning, to qualify for benefits, she must also show that she 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, 597–598 (1974). To satisfy the reasonable preservation requirement, a claimant does not have to establish that he had no choice but to resign; he merely needs to show that her actions were reasonable. Norfolk County Retirement System, 66 Mass. App. Ct. at 766.

While not incorporated in the review examiner's findings of fact, both of the employer's witnesses confirmed that employees who learned that they needed time off with less than three weeks' notice could submit a written request to the employer's Chief of Operations. However, the claimant did not attempt to request time off on June 5th prior to resigning. *See* Consolidated Findings ## 22, 23, and 25. Further, the review examiner accepted as credible the employer's contentions that the employer's chief discussed with the claimant the possibility of her applying for FMLA to address her caregiving needs. *See* Consolidated Finding # 24. Such assessments are within the scope of the fact finder's role, and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). As both of the employer's witnesses provided consistent testimony confirming that the claimant had been offered FMLA, we have accepted the review examiner's credibility assessment as being supported by a reasonable view of the evidence.

[3] Exhibits 1–3 are also a part of the unchallenged evidence introduced at the hearing and placed into the record.

The claimant declined to explore this feasible alternative prior to resigning. *See* Consolidated Finding # 24. Because the employer demonstrated a willingness to work with the claimant, the claimant has not shown that she reasonably believed further steps to preserve her employment would have been futile.

We, therefore, conclude as a matter of law that the claimant resigned her position voluntarily without good cause attributable to the employer or urgent, compelling, and necessitous reasons under G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the week of June 2, 2024, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

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.

LSW/rh