

The claimant waited until she was offered work as an independent contractor in Arizona to quit her job and join her partner in Arizona. Moving to be with her partner renders her ineligible for benefits under G.L. c. 151A, § 25(e), paragraph 11. Further, quitting for independent contractor work is not resigning in good faith to accept new permanent, full-time employment pursuant to G.L. c. 151A, § 25(e), paragraph 3, as such work is not considered employment under G.L. c. 151A, §§ 1(k) and 2.

**Board of Review
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Issue ID: 0082 9183 83

*** CORRECTED DECISION ***

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 her position with the employer on April 4, 2024. She filed a claim for unemployment benefits with the DUA, effective June 2, 2024, which was denied in a determination issued on July 30, 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 August 22, 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 make subsidiary findings from the record. 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 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, after remand, the review examiner found that the claimant left her employment when she was offered work as an independent contractor.

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 part-time wedding and special events coordinator for the employer, a historic museum, between May, 2022, until [sic] April 4, 2024, when she separated.
2. The claimant's direct supervisor was the food and beverage director.
3. The claimant did not work anywhere else while working for the employer.
4. In March, 2020, the claimant moved to Massachusetts to take care of her paternal grandfather, who was having health issues at the time and required care. The claimant's paternal grandfather passed away in January, 2023.
5. The claimant also took care of her maternal grandmother while she had thyroid cancer. The claimant's maternal grandmother passed away in April, 2023.
6. The claimant has been diagnosed with obsessive compulsive disorder, depression, and anxiety.
7. The claimant sought medical treatment for her mental health conditions, including attending a program called NOCD.
8. In August, 2023, the claimant was sexually assaulted at a car garage while she was getting a tire changed.
9. The police were called, and charges were filed against the person who assaulted the claimant.
10. The claimant did not want to tell the employer about the assault or the impact the assault had on her because she felt it was a personal matter.
11. In November, 2023, the claimant saw the person who assaulted her on the street. The person did not approach the claimant, but the claimant was very upset about seeing the person.
12. The person who assaulted the claimant lived near the claimant.
13. The claimant's partner moved to [City], Arizona in December, 2023, to finish their clinical work in the area.
14. The claimant did not initially plan to move with her partner in December, 2023.
15. After a period of time, the claimant decided to seek self-employment work to be able to move to [City] with her partner.

16. The claimant reached out to a person that she had done self-employment independent contracting work for previously and inquired about possible work.
17. The claimant was offered independent contracting work with the person that she had previously completed work for.
18. The claimant decided to quit her job with the employer when she believed that she would be able to do the independent contracting work after her employment with the employer ended.
19. The claimant gave the employer her notice in February, 2024, with no set last day.
20. In March, 2024, the claimant and the employer worked on solidifying the claimant's last day of work and they agreed upon March 31, 2024.
21. The employer offered the claimant some additional work which the claimant agreed to do, before permanently separating.
22. The claimant quit her employment with the employer on April 4, 2024, because she wanted to move with her partner, the claimant wanted to complete self-employment independent contracting work, and the claimant felt mental stress living in Massachusetts after her assault.
23. The claimant was never advised by a medical professional to quit her job.
24. The claimant moved to [City], Arizona after quitting her job.
25. The offer to the claimant regarding the independent contracting work did not work out and the claimant never began the independent contracting work.
26. The claimant had no history of issues with the employer.
27. On May 15, 2024, the [County] District Attorney's Office issued the claimant a letter stating that a trial for the person who assaulted her was scheduled for June 24, 2024.
28. A trial was scheduled for the person who assaulted the claimant for June 24, 2024, but the trial did not go forward that day.
29. At the time of the claimant's hearing, August 16, 2024, the resolution to the charges filed against the person who assaulted the claimant were still pending.

Credibility Assessment:

The claimant's testimony regarding being sexually assaulted/molested by an individual in August, 2023 while having her tire changed at a garage and the

individual living near her home is accepted as credible. The claimant was direct and credible in her testimony regarding said incident and the individual living near her home. The claimant's testimony regarding being diagnosed with obsessive compulsive disorder (OCD), depression, and anxiety, [and] regarding attending the NOCD program is accepted as credible. The claimant was direct and credible in her testimony as to not wanting to tell the employer about the effects that the assault had on her due to it being a personal matter. An assault and the impact of the same is an inherently personal matter, as such, it is concluded that it was the claimant's personal decision to withhold this information from the employer.

The document stating that a criminal trial was scheduled for June 24, 2024, is found to be credible. As such, it is concluded that the trial was scheduled for June 24, 2024, which ultimately did not go forward that day.

Regarding the claimant's partner's move to Arizona, the claimant's testimony that she initially did not plan to move to Arizona with her partner in December, 2023 is accepted as credible. The claimant was able to solidify plans to begin self-employment work, which was the reason that she gave her notice when she did and then began to make preparations for her move. As such, it is concluded that after the claimant was able to gain an offer of self-employment, she decided to move to [City] with her partner. Although the claimant provided testimony that it was "mentally taxing" to remain in Massachusetts, the claimant had stayed in Massachusetts for multiple months after her assault and seeing the assaulter on the street. Additionally, the claimant was unable to provide further details as to the mentally taxing nature of remaining in Massachusetts. As such, it is concluded that the claimant ultimately quit due to being offered self-employment work and to move to [City] to be with her partner.

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.

Because the claimant resigned from her employment, this case is properly analyzed pursuant to G.L. c. 151A, § 25(e), 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.

Under the above provisions, it is the claimant's burden to establish that she left her job voluntarily with good cause attributable to the employer or involuntarily for urgent, compelling, and necessitous reasons.

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 (2006), *quoting Reep*, 412 Mass. at 847.

Here, the review examiner found that the claimant was motivated to quit her employment and leave Massachusetts for various reasons, including the mental stress that she felt after being sexually assaulted in Massachusetts in August, 2023. Consolidated Findings ## 8 and 22. However, the claimant's primary reason for quitting her employment on April 4, 2024, was a prior employer's promise of work as an independent contractor in Phoenix, Arizona. *See Consolidated Findings ## 17–18*. Further, the findings establish that the claimant sought work specifically in Arizona in 2024 to be able to join her partner, who had moved to the state earlier in December of 2023. Consolidated Findings ## 13 and 15.

The Legislature has determined that an individual who leaves employment to accompany one's spouse or another person at a new locality is not eligible for unemployment benefits. G.L. c. 151A, § 25(e), paragraph 11. Because the claimant here quit her employment to move to Arizona to be with her partner, she has not established an urgent, compelling, and necessitous reason that rendered her resignation involuntary. Inasmuch as the claimant has not met her initial burden of establishing an urgent, compelling and necessitous reason to leave her employment, we need not analyze whether she took reasonable steps to preserve her employment prior to leaving. *Norfolk County Retirement System*, 66 Mass. App. Ct. at 766 (citation omitted).

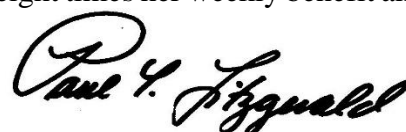
Further, the record shows that the claimant waited until she was offered work in Arizona to quit her job and join her partner in that state. Although quitting one's employment for other *employment* may render a claimant eligible for benefits in certain circumstances, that is not the

case here.¹ The claimant quit when she was offered work as an independent contractor. Such work is excluded from the definition of “employment” in G.L. c. 151A. *See* G.L. c. 151A, §§ 1(k) and 2.

We, therefore, conclude as a matter of law that the claimant has not shown that she left her employment for good cause attributable to the employing unit or for urgent, compelling and necessitous reasons pursuant to G.L. c. 151A, § 25(e)(1). We further conclude that the claimant did not leave her employment in good faith to accept new employment on a permanent full-time basis, as meant under G.L. c. 151A, § 25(e).

The review examiner’s decision is affirmed. The claimant is denied benefits for the week ending April 6, 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 - * January 24, 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.

¹ *See* G.L. c. 151A, § 25(e), paragraph 3, which provides, in pertinent part, as follows:

No disqualification shall be imposed if such individual establishes to the satisfaction of the commissioner that he left his employment in good faith to accept new employment on a permanent full-time basis, and that he became separated from such new employment for good cause attributable to the new employing unit.

SVL/rh