The claimant's child-care demands provided an urgent, compelling, and necessitous reason for not reporting for work for three days. However, his reason for not telling the employer that he would be absent, figuring he would be penalized for his absences anyway, was neither good cause attributable to the employer nor an urgent, compelling, and necessitous circumstance. Held the claimant was ineligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 0084 0107 13

Introduction and Procedural History of this Appeal

The employer appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to award 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 October 16, 2024. He filed a claim for unemployment benefits with the DUA, effective October 13, 2024, which was denied in a determination issued on November 14, 2024. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended only by the claimant,[1] the review examiner overturned the agency's initial determination and awarded benefits in a decision rendered on December 28, 2024. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant resigned from his employment for urgent, compelling, and necessitous reasons, and, thus, he was not disqualified under G.L. c. 151A, § 25(e)(1). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the employer's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant demonstrated urgent, compelling, and necessitous reasons for his failure to report to work or notify the employer of his absence, is supported by substantial and credible evidence and is free from error of law, where he did not tell the employer because he thought he'd be penalized whether he called or not.

Findings of Fact

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

[1] The employer's representative appeared for the hearing but withdrew, because the employer's witness was unavailable.

1. The claimant worked full-time as a direct support professional for the employer, a behavior health provider, between 11/5/2023 and 10/6/2024, when he separated.

2. The claimant directly reported to the house coordinator (Manager).

3. As a direct support professional, the claimant had a fixed schedule working at least 40 hours per week. The claimant had fixed hours of Monday 11:00 p.m. to 9:00 a.m. through Thursday 11:00 p.m. to 9:00 a.m.

4. The claimant is a father with two (2) daughters who are five (5) years old (youngest daughter) and seven (7) years old (oldest daughter).

5. The claimant's youngest daughter lives with him and her mother (mother A), and the oldest daughter lives with her mother (mother B).

6. Mother B provided childcare to the oldest daughter.

7. In September 2024, the youngest daughter's school changed their start time from 7:45 a.m. to 8:15 a.m.

8. The mother A was available to provide childcare and drop-off the youngest daughter at school when the claimant worked overnight hours with employer.

9. On 9/23/2024, the claimant requested a change is [sic] his schedule with the employer because mother A was returning to work and would no longer be available to provide childcare and drop-off the youngest daughter at school.

10. The Manager informed the claimant that the employer did not have any shifts available for him to transfer to. The Manager informed the claimant that he could become a relief employee, which meant he would have to pick up shifts whenever the employer had available shifts.

11. Relief employees are not guaranteed any hours, and the hours for relief employees can vary.

12. At the beginning of October 2024, the mother A was no longer able to drop off the youngest daughter at school because she returned to work from a leave of absence, and she had to be at work by 8:00 a.m.

13. The claimant's status changed to relief employee because he could no longer work the schedule he was hired for due to lack of childcare.

14. The claimant did not pick up many shifts as a relief employee because the employer hired new employees that picked up shifts before the claimant was able to pick up shifts.

15. On 10/6/2024, the claimant worked his last physical shift with the employer.

16. Before 10/14/2024, the claimant accrued eight (8) attendance points. The employer's attendance policy maintained that employees who did not report for their scheduled shifts and did not report their absences, would receive 10 attendance points. The employer's attendance policy maintained that employees would be terminated if they reached 20 attendance points.

17. The claimant picked up shifts to work on 10/14/2024, 10/15/2024, and 10/16/2024.

18. The claimant did not report to work on 10/14/2024, 10/15/2024, and 10/16/2024 because the youngest daughter was sick, and he did not have anyone else that could provide childcare for her.

19. The claimant did not inform the employer that he was going to be absent from work on 10/14/2024, 10/15/2024, and 10/16/2024, because he thought he would be penalized for being absent if he did or did not call out.

20. The claimant resigned from his employment on 10/16/2024, when he was a no call no show for three (3) consecutive shifts.

21. Before he resigned, the claimant did not request a leave of absence from the employer because he did not know how long his childcare issue would last.

22. It is unknown if the claimant was eligible for a leave of absence at the time he resigned.

23. At the time the claimant resigned, the employer did not have available shifts for the claimant to transfer [sic].

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 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 findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is eligible for benefits.

We agree with the review examiner that the claimant effectively resigned when he was a no-call, no-show. *See* Finding of Fact # 20; *see also* Olechnicky v. Dir. of Division of Employment Security, 325 Mass. 660, 661 (1950) (upholding the Board of Review's conclusion that the failure of an employee to notify his employer of the reason for absence is tantamount to a voluntary leaving of employment within the meaning of G.L. c. 151A, § 25(e)(1)).

As such, the claimant's eligibility for benefits is properly analyzed pursuant to the following provisions under G.L. c. 151A, § 25(e), which state, in relevant part:

> [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.

These statutory provisions expressly place the burden of proof upon the claimant.

Nothing in the record indicates that the employer had anything to do with the claimant's failure to report for his assignment or contact the employer. Thus, there is no basis to conclude that his separation was for good cause attributable to the employer. *See* Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980) (to determine if the separation was for good cause attributable to the employer, the focus is on the employer's conduct).

The record does show that the claimant may have had urgent, compelling, and necessitous reasons for not reporting to work, as assigned. "[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 v. Comm'r of Department of Employment and Training, 412 Mass. 845, 847 (1992). 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, 412 Mass. at 848, 851. Childcare demands may constitute such circumstances. *See* Manias v. Dir. of Division of Employment Security, 388 Mass. 201, 204 (1983) (citations omitted). Here, the review examiner accepted that the claimant was unable to report for work on October 14, 15, and 16, 2024, because his daughter was sick, and there was no one else who could care for her. Finding of Fact # 18.

However, in this instance, the claimant was not only absent from work. He failed to notify the employer that he would not be there. In order to authorize the payment of benefits, we must also consider the claimant's reasons for not communicating with the employer. *See* Board of Review Decision 0076 1267 09 (Sept. 29, 2023) (although lack of transportation may have constituted an urgent, compelling, and necessitous reason for not being able to report for work, Board denied benefits because that did not explain why the claimant failed to notify the employer of his absences).

Finding of Fact # 19 provides that his reason was that he thought the employer would penalize him regardless of whether he called. Since he chose not to call before the employer had an opportunity to decide what it would do, we cannot attribute the claimant's behavior to the employer's conduct. Therefore, it does not rise to good cause attributable to the employer. Nor does the possibility of discipline for being absent demonstrate a compelling, pressing reason which prevented him from

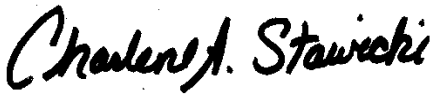
calling the employer. For this reason, the claimant did not meet his burden to show urgent, compelling, and necessitous circumstances.

We, therefore, conclude as a matter of law that the claimant failed to demonstrate that he resigned from employment for good cause attributable to the employer or urgent, compelling, and necessitous reasons as meant under G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is denied benefits for the week beginning October 13, 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 - February 26, 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.

AB/rh