

The claimant quit for new, full-time, permanent employment a week prior to the expected start date of her new job. She did not show good cause attributable to the employer or urgent, compelling, and necessitous reasons to quit her job with the instant employer one week prior to the expected start date of her new job. However, the claimant was eligible for benefits during the following week, as her new employer delayed her start date by one week due to no fault of the claimant.

**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: 0084 4871 89

Introduction and Procedural History of this Appeal

The claimant 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 we affirm in part and reverse in part.

The claimant resigned from her position with the employer on December 2, 2024. She filed a claim for unemployment benefits with the DUA, effective November 17, 2024, which was denied in a determination issued on December 11, 2024. The claimant 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 awarded benefits in a decision rendered on February 1, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant left employment for urgent, compelling, and necessitous reasons and, thus, 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 left her employment for urgent, compelling, and necessitous reasons when she quit for a new job, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant worked full-time for the instant employer, a high school, as an LPN Paraprofessional from August 26, 2024, to December 2, 2024. The claimant's rate of pay was \$33.50 per hour.

2. The claimant worked the position of LPN Paraprofessional in the same high school from August of 2023 until August 4, 2024, as a contract worker, paid through a private agency. The school district took over the funding for the school year of 2024/2025, and the claimant subsequently became employed by the school district under the special education department. The job description/duties did not change with the change of employers.
3. The claimant's job duties required her to provide classroom support to the substantially separate school program to aid students with significant mental, medical, and physical challenges.
4. In the fall of 2024, the claimant found that she was not utilizing her nursing skills as much as she wanted to, and the work mainly consisted of classroom aid work not related to the medical needs of the students. The claimant spoke several times with the school nurse explaining her desire to do more nursing work with the hopes of obtaining a job in the health office.
5. The claimant also considered home nursing care as a career change and was in discussions with a potential private client.
6. On November 17, 2024, the claimant was offered and accepted a full-time position as a home care nurse, to begin on December 9, 2024, when the client was discharged from the hospital.
7. On November 17, 2024, the claimant submitted a letter of resignation to the school principal and the staff director. The letter gave a final work date of December 2, 2024. The claimant stated the reason – that she wanted to do more direct nursing care work.
8. The home care nursing job was located closer to the claimant's residence than the school, and the hourly pay was greater than her school job.
9. The claimant started her new employment on December 14, 2024, due to a delay in the new employer's discharge from the hospital. As of the date of the hearing, the claimant is employed full-time with the new employer.

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. After such review, the Board adopts the review examiner's findings of fact except as follows. We reject the portion of Finding of Fact # 9, which states that the claimant began her new employment on

December 14, 2024, as the claimant testified that she began on December 16th.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 legal conclusion that the claimant is eligible for benefits for all weeks, beginning December 2, 2024.

The review examiner found that the claimant resigned from the instant employer on December 2, 2024, after she accepted an offer of new employment with a start date of December 9, 2024. Findings of Fact ## 6–7. Because the claimant resigned, her eligibility for benefits is properly analyzed under the following provisions under G.L. c. 151A, § 25(e)(1):

[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.

Since the claimant resigned to accept another position, we must also consider a separate provision under G.L. c. 151A, § 25(e), which states, 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.

All of these provisions expressly place the burden of proof upon the claimant.

The findings provide that the claimant quit her full-time position with the instant employer to accept new, full-time employment. Findings of Fact ## 6–7. There is no indication in the record that the new position was to be temporary, rather than permanent. Further, the claimant was originally scheduled to begin her new job on December 9, 2024, but this was delayed until December 16, 2024, due to her new employer's hospitalization. Findings of Fact ## 6 and 9.

Although the latter paragraph of G.L. c. 151A, § 25(e), referenced above specifically states that the claimant must show that she “became separated from such new employment for good cause attributable to the new employing unit,” we note that the DUA Adjudication Handbook enunciates a more expansive definition for how to apply this provision of the statute:

Under § 25(e), a claimant is not disqualified if the claimant establishes 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 *under non-disqualifying circumstances*.

¹ The claimant's testimony in this regard, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

See Division of Unemployment Assistance Adjudication Handbook, Ch. 7, § 9 (emphasis added).

Here, the new employer failed to offer the claimant work during the week ending December 16, 2024, as promised, through no fault of the claimant. This failure to provide work is akin to a layoff, which renders the claimant eligible for benefits pursuant to G.L. c. 151A, § 25(e)(2). Because the new job was full-time and permanent, and the claimant was out of work for a week due to the new employer's delay of her start date, the claimant qualifies for benefits under the above statutory provision during the week ending December 14, 2024.

However, because the claimant quit her job with the instant employer on December 2, 2024, we must also consider her eligibility for the week ending December 7, 2024. At the time she resigned, her offer of new employment had a start date of December 9, 2024. To be eligible for benefits, the claimant must establish that she had to quit her job with the instant employer the week before, on December 2, 2024, either because she had good cause attributable to the employer or for urgent, compelling, and necessitous reasons.

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. Conlon v. Dir. of Division of Employment Security, 382 Mass. 19, 23 (1980). Because nothing in the record indicates that the instant employer did anything to cause the claimant to leave when she did, there is no basis to conclude that she had good cause attributable to the employer.

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). Again, the claimant has presented no evidence to suggest any pressing personal circumstances that caused her to stop working on December 2, 2024, a week before her new job was to begin. Thus, she has not met her burden to demonstrate urgent, compelling, and necessitous reasons for separating during this week.

We, therefore, conclude as a matter of law that, for the week ending December 14, 2024, the claimant has satisfied her burden to show that she left her employment in good faith to accept new employment on a permanent full-time basis and became separated from such new employment under non-disqualifying circumstances pursuant to G.L. c. 151A, § 25(e). We further conclude that, for the week ending December 7, 2024, the claimant has not shown that she separated for good cause attributable to the employer or for urgent, compelling and necessitous reasons.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied benefits for the week ending December 7, 2024. However, she is entitled to receive benefits for the week ending December 14, 2024, if otherwise eligible.²

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 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

² We note that the DUA electronic record-keeping system, UI Online, shows that the claimant has been disqualified indefinitely, beginning December 15, 2024, on other grounds. See Issue ID # 0084 5628 91. Therefore, we have limited our decision to the two weeks following her separation from the instant employer.