The claimant had an urgent, compelling and necessitous reason to quit where he could not work because he was caring for his ill child. When his son's illness continued and he knew he could not report to work again as promised, held he took reasonable steps to preserve his employment and that further efforts would have been futile. The claimant is eligible under G.L. c. 151A, § 25(e)(1).

Board of Review
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Issue ID: 334-FHK3-8VT8

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 affirm.

The claimant separated from his position with the employer on October 15, 2024. He filed a claim for unemployment benefits with the DUA, effective October 6, 2024, which was approved in a determination issued on November 19, 2024. The employer 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 awarded benefits in a decision rendered on February 19, 2025. We accepted the employer's application for review.

Benefits were awarded after the review examiner determined that the claimant involuntarily left employment for urgent, compelling, and necessitous reasons and, thus, was not disqualified under G.L. c. 151A, § 25(e). 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 additional evidence pertaining to the reasons for which the claimant separated from the employer. Both parties attended the three remand hearing sessions. 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 took reasonable steps to preserve his employment prior to quitting, is supported by substantial and credible evidence and is free from error of law, where the claimant did not ask for additional time off prior to quitting.

Findings of Fact

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

1. On July 31, 2023, the claimant began working full-time for the employer as a machine operator. He reported to the plant manager. His most recent rate of pay was $22.00 per hour, plus $3.00 per hour for bonus pay.

2. The claimant's primary language is Vietnamese. He is not very comfortable in English.

3. The claimant relied on a co-worker who speaks both Vietnamese and English to help him communicate with the employer. The claimant also communicated with the employer through text messages to the plant manager.

4. When the claimant was hired, he was given information about the employer's family and medical leave policy in writing.

5. The claimant did not read the policy due to his limited knowledge of English. His coworker told him that the document included the employer's policies and told him to sign it.

6. On July 25, 2023, the claimant signed an acknowledgement of the employer's leave policy.

7. The claimant's son is three years old and has serious health concerns, including problems with respiratory illnesses and a weak immune system. The child has had the COVID-19 virus 3 times since birth.

8. The claimant's son exhibits symptoms of developmental delays and speech delays. He has difficulty communicating his needs and generally does not speak or use gestures. The claimant was concerned that the child is autistic.

9. The claimant's child requires a caregiver who speaks Vietnamese and can handle his specific needs. The claimant and his wife have had significant difficulty finding childcare for their son.

10. The claimant and his wife have been seeking a diagnosis for their son. They have had him evaluated for developmental and speech delays.

11. The last day the claimant physically worked for the employer was September 18, 2024.

12. After September 18, 2024, the claimant's son became ill with [a] fever, a cough, and a rash. The claimant brought him to the hospital.

13. The claimant informed the plant manager that he needed time off to care for his sick child. The manager granted his request.

14. Every day from September 23, 2024, until September 27, 2024, the claimant brought his son to the hospital. The claimant's son was diagnosed with pneumonia and given a round of antibiotics.

15. On September 25, 2024, the claimant texted the employer, “can I off this week. My kid got virus and bacteria infection”. The employer responded “Ok”. The claimant’s text included medical notes in Vietnamese and picture of his child in a hospital bed. (Remand Exhibit 14).

16. On October 3, 2024, the claimant texted his manager and told him, “my kid feel better. He still cough limited. but it okay. Can I go back to work on Monday?”. The next Monday was October 7, 2024. The manager replied “Yes, we need you back. Glad to hear that things are going better with your kid.” (Remand Exhibit 14).

17. On October 6, 2024, the claimant's son had to go to the emergency room again with [a] fever and a cough. The doctors confirmed that the child had pneumonia again.

18. On October 7, 2024, the claimant had to take his son to the doctor again for treatment.

19. The claimant reached out to his co-worker to ask the manager about taking more time off to care for his son. The claimant believed that the co-worker spoke to the manager. The co-worker told the claimant that the manager said that he needed someone to perform the claimant’s duties and had discharged the claimant.

20. The claimant did not return to work on October 7, 2024, or any day thereafter.

21. The claimant believed that he was discharged. He never called the employer to confirm whether or not he was discharged.

22. On October 8, 2024, the claimant filed a claim for unemployment benefits effective October 6, 2024.

23. The employer was not aware that the claimant believed he had been discharged on October 7, 2024.

24. The employer had not discharged the claimant and had not told the co-worker that the claimant had been discharged. If the employer had discharged the claimant, it would have been done in person with a formal interpreter.

25. The employer believed that the claimant was essentially on an informal medical leave. They never asked for medical documentation or proof of the child’s illness.

26. On October 9, 2024, the plant manager texted the claimant to ask if he was returning to work. “Hi [Name A], Will you be in next week?” The claimant said “Good afternoon, [Name B]. Sorry, what’s your mean?” The manager clarified, “Do you expect to come to work next week? If you remember that Monday is a holiday.” The claimant said, “I am happy to hear that. Can I talk with you tomorrow?” The manager agreed. (Remand Exhibit 8)

27. The manager was asking when the claimant would be able to return to work from his informal leave.

28. The claimant believed that the manager was asking him to reapply for his position.

29. On October 10, 2024, the claimant texted the plant manager and informed him that he would return the next week. “I will come to work next week. Sorry today answer because a wait my wife off next week. last week when he still medicine he is okay. but when he don’t have medicine he come amergency roon at last Sunday.” The manager responded, “Ok.” (Remand Exhibit 8).

30. On October 15, 2024, the claimant sent his manager a text stating “Good morning [Name B]. sorry [Name B], I don’t come back to work. my kid still sick. And later I can off some day again. so I want stay at home until my kid be healthy. if later you need me work I will application again.” (Remand Exhibit 8).

31. The claimant was essentially telling the manager that he could not work while his child was sick and that if his child was healthier in the future, he would reapply to his position.

32. The employer took this statement as the claimant giving notice that he was quitting.

33. On October 15, 2024, the claimant quit his position to care for his sick son.

34. The employer did not discharge the claimant.

35. The claimant could have been eligible for a family or medical leave of absence.

36. The claimant did not ask for a leave of absence. He did not know he was eligible for one because he had not read the policies and was focused on caring for his son.

37. The plant manager did not directly inform the claimant that he could apply for a leave of absence.

38. At some point in October, the claimant did find a babysitter who could come to the house. The babysitter only came for a few days because they could not care for the child.

39. On November 19, 2024, the Department of Unemployment Assistance issued a Notice of Approval allowing the claimant benefits under Section 25(e)(1) commencing the week beginning October 6, 2024. The employer appealed.

40. After the claimant separated from the employer, he has had to continue to bring his child to urgent care for medical concerns including coughing and fever.

41. At the beginning of April of 2025, the claimant found childcare for his son. His son goes to a babysitter's home where 2 caregivers watch 5 children during the day.

42. On June 2, 2025, the claimant's wife brought her son for developmental assessment by [a] specialist in childhood development and speech pathology with the [Town A] Public Schools. He scored below average in all categories, lowest being communications – developmental and communication disabilities, qualified for services by a special education teacher and speech language pathologist. (Remand Exhibit 9).

43. On November 19, 2024, the Department of Unemployment Assistance issued a Notice of Approval allowing the claimant benefits under Section 25(e)(2) of the Law commencing the week beginning October 6, 2024. The employer appealed.

44. On January 29, 2025, the claimant and the employer attended an appeal hearing. The review examiner modified the initial decision, finding the claimant eligible for benefits under Section 25(e)(1).

Credibility Assessment:

The claimant and the employer attended a hearing on January 29, 2025. The claimant and the employer's witnesses (the chief financial officer and the plant manager) attended three sessions of a remand hearing on April 29, 2025, May 20, 2025, and June 9, 2025.

After the initial hearing, the review examiner made the determination that the claimant quit his position involuntarily for urgent, compelling, and necessitous reasons. In addition, the review examiner determined that the claimant had made an attempt to preserve his position by staying in contact with the employer about his son's health and that the fact he did not ask for a leave of absence was excused by his distress and the language barrier.

There was no evidence or testimony given during the remand hearing that significantly calls into question the initial determination or the basic credibility of

any of the participants. During the remand hearing, the claimant and the employer gave testimony consistent with their testimony from the initial hearing and provided the documents they had access to when asked by the review examiner. In one case, the employer submitted a transcript of a text message conversation between the plant manager and the claimant (Remand Exhibit 8) and not screenshots, but there is no reason to doubt the veracity of this transcript, as other screenshots of some of this conversation were submitted with the same texts, and as the claimant did not refute any part of the transcript.

After the remand hearing, the employer's testimony that the claimant was not discharged remains credible. According to the employer, the claimant had taken an informal leave to care for his sick son and quit on October 15, 2024, via his text message on that day. The claimant contended that he was fired on October 7, 2024. He based his belief on his communication with his co-worker, who had told him that the manager had stated that if he could not return to work, he would be discharged. The claimant had already been out of work for two weeks, had promised to return on October 7, 2024, and had to go back on that promise because of his son's illness. During the remand hearing, the review examiner asked the claimant why he believed he was discharged on October 7, 2024, if the employer continued to text him about returning to work. The claimant explained that when the employer had reached out to him after October 7, 2024, he interpreted this as inviting him to reply [sic] for his position, which is supported by his October 15, 2024, text where he stated "if later you need me work I will application again." There is no reason to disbelieve the claimant that by October 7, 2024, he believed that he had been discharged, as he filed his claim for benefits on October 8, 2024. However, the employer's testimony that they did not discharge the claimant is more credible, especially given the text messages from October 9, 2024, until October 15, 2024, showing that the employer continued to reach out to the claimant about returning to work, given the employer's explanation that if they had discharged the claimant, it would have been done in person with a formal interpreter, and given that the claimant never confirmed his supposed discharge with the employer.

The claimant credibly maintained that the major reason for his not returning to work, thus leaving his position, was not his lack of childcare, but rather his son's illness. The review examiner questioned the claimant multiple times about his reasons for not returning to work. The claimant consistently answered that the most important factor was his son's repeated medical concerns and hospital visits. Although it is clear that the claimant's child's illness and the lack of childcare are linked, the triggering event for the separation was the child's chronic illness, which required the claimant to keep taking his son to the hospital, and not the lack of childcare.

Another issue discussed was whether the claimant took sufficient actions to preserve his position. First, the claimant, whether he thought he was reapplying for the position or not, did promise the employer that he would return on multiple occasions, and then had to go back on his promise due to his son's illness. This demonstrates a willingness to try and keep his job. Although the claimant did not

ask for a leave of absence, despite being eligible for one, he demonstrated that he did not truly understand that he could have asked for a leave. The employer demonstrated that they maintained a leave of absence policy and provided documentary evidence the claimant signed it. The claimant testified that he did not know about the leave of absence policy, despite signing it, because of his language barrier. He testified that he had signed the policy without knowing what it really said because he was told to do so by his coworker. In addition, the employer never informed the claimant that he could ask for a medical or family leave and never asked for medical documentation.

Here, much of the determination of the reasonable nature of the claimant's actions and beliefs relies on his communication with his co-worker who sometimes interpreted for him. From the claimant's perspective, his co-worker helped him communicate with the employer, including helping him with the onboarding paperwork. The claimant's testimony that the coworker did not translate every word of the employer policies and told him to sign the leave policy without looking it over, resulting in the claimant not being aware that he could ask for family and medical leave. The claimant also believed that he was discharged based on a conversation with the co-worker. This co-worker, however, was not present and could not be questioned.

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. 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. However, we set aside the portion of the credibility assessment where the review examiner erroneously makes conclusions of law regarding the reasonableness of the claimant's efforts to try and keep his job, as this is a mixed question of law and fact that, at this stage of the proceedings, is properly decided by the Board. *See* Dir. of Division of Employment Security v. Fingerman, 378 Mass. 461, 463–464 (1979) "Application of law to fact has long been a matter entrusted to the informed judgment of the board of review."). As discussed more fully below, we affirm the review examiner's original legal conclusion that the claimant is eligible for benefits.

The claimant contended that he was discharged by the employer via his coworker on October 7, 2024, and then asked to reapply for his job on October 9th, an offer which the claimant initially accepted before being unable to return to work due to his son's illness. Consolidated Findings ## 18–19, 26–30. The totality of the evidence in the record does not support a conclusion that the claimant's belief that he was discharged and was subsequently asked to reapply for his job was reasonable. The claimant did not confirm with the employer whether he was in fact discharged on October 7th, and nothing in the employer's subsequent text messages indicates that the claimant was discharged on October 7, 2024, or that he was subsequently asked to reapply for his job. Consolidated Findings ## 21, 26, and 28. Rather, the employer's messages to the claimant clearly

show that the claimant was still employed and the employer wanted to know when he would return from his time off. Consolidated Finding # 27.

Because the claimant was not discharged, G.L. c. 151A, § 25(e)(2), does not apply. The review examiner found that the claimant quit his employment on October 15, 2024, and, therefore, 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 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's four-year-old son was having respiratory health issues and infections, including pneumonia, in September and October of 2024, that required frequent visits to the emergency room. Consolidated Findings ## 12–18. Because the claimant needed to be available to care for his son while he was sick, he has demonstrated urgent, compelling, and necessitous reasons to leave his job. Consolidated Finding # 33.

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 her original decision, the review examiner concluded that the claimant took reasonable steps to preserve his employment, as he had asked the employer for time off to care for his son and seek medical treatment for him. We agree. *See* Consolidated Findings ## 13, 16, and 19 show that the claimant did ask the employer for time off to care for his son, and that he kept in contact with the employer during his absence.

Although the claimant did not request a formal leave of absence, it is not necessary that an employee make such a request to establish reasonable efforts to preserve. *See* Guarino v. Dir. of Division of Employment Security, 393 Mass. 89, 94 (1984). A claimant is required to take steps to try and remain employed that are reasonable under the circumstances. Here, the claimant had informally asked for time off to care for his son on September 25, October 9, and October 10, 2024, and the employer had granted the requests without issue. Consolidated Findings ## 15, 26, 29. However, his son's illness continued to prevent him from working. When, on October 15, 2024, his son was sick again and he knew he could not report to work again as promised, the claimant could reasonably conclude that further efforts to preserve his job at that point would have been futile.

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 reasons, and that he took reasonable steps to preserve his employment prior to leaving. He is, therefore, eligible for benefits pursuant to G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is entitled to benefits for the week beginning October 6, 2024, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - August 20, 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