

**Being re-assigned to an old supervisor who had belittled and chastised the claimant many years earlier caused the claimant to experience severe anxiety, take an FMLA, and, ultimately resign when she was unable to return to work by the employer's deadline. The review examiner improperly ignored competent medical evidence which supported the claimant's testimony about her mental health condition. Held she separated due to urgent, compelling, and necessitous reasons.**

**Board of Review  
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**Issue ID: SEC25e1&2-16-004**

## **BOARD OF REVIEW 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 reverse.

The claimant resigned from her position with the employer on May 3, 2016. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on June 4, 2016. 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 November 9, 2016. 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, she was 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 claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant did not have either good cause attributable to the employer or urgent, compelling, and necessitous reasons for resigning, is supported by substantial and credible evidence and is free from error of law, where there is undisputed testimony supported by substantial medical evidence that the claimant could not return to work from her leave of absence by the expected deadline due to a severe anxiety disorder.

### **Findings of Fact**

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

1. The claimant worked full-time for the employer, a [government] agency, from April 12, 1998 to May 3, 2016 as an Administrative Officer.
2. On September 4, 2015, the employer informed the claimant that she was to take a one-year detail at the regional office under the Chief of the Division.
3. The claimant worked for the Chief of the Division ten years prior and believed him to be difficult to work for as she considered him to have engaged in belittling and accusatory behavior. The claimant requested transfers to other department in order to avoid working under the Chief of the Division.
4. The claimant began having anxiety over the assigned detail.
5. The detail was comprised of time split between two programs in the regional office on alternating days and one day a week at her usual location.
6. On September 24, 2015, the claimant requested an accommodation related to a condition of claustrophobia. At that time, the employer requested medical documentation justifying the accommodation request, which the claimant obtained on September 28, 2015. The September 28, 2015 note was on a script stating that she needed to be near a window and not in a cubicle.
7. The detail was to start on October 1, 2015, but was delayed due to training and a short leave of absence.
8. On October 7, 2015, the employer requested a full medical explanation from the claimant's provider.
9. Between October 7, 2015 and October 27, 2015, the employer, without further documentation from the claimant's provider, offered a reasonable accommodation to the claimant consisting of a workspace facing a window, though not directly adjacent, and a cubicle with lower walls.
10. The claimant's first day on the new detail was October 26, 2015. The claimant reported to her usual office first and began assisting in some financial documents. The claimant allegedly lost track of time and reported to the regional office at 10:40 a.m. The Chief of the Division planned and held an office meeting at 9:00 a.m. with refreshments to welcome her. Upon arrival, the claimant was already upset and needed to compose herself. When the claimant reported to the office, the Chief of the Division commented, "You were supposed to be here at 9!"
11. The accommodation with her work space was not prepared. The Chief of the Division offered that the claimant wait to sign the reasonable accommodation

document after the accommodation is made, to which the claimant agreed. The claimant's computer was not up and running (a new one had to be ordered) and she was given no particular duties.

12. The employer allowed the claimant to work in an alternate space until the permanent accommodations could be made.
13. The claimant left work one hour early for a doctor's appointment.
14. On October 27, 2015, the claimant reported to the other program she was to work on alternate days. The claimant was unaware that she was to attend a budget meeting in the first program. The Chief of the Division later commented to the claimant, "You missed an all-employee budget meeting."
15. On October 28, 2015, the claimant worked and no issues occurred.
16. On October 29, 2015, the claimant watched a video on budget reconciliation and no issues occurred. The claimant reported to the on-site nurse due to her alleged stress.
17. On October 30, 2015, the claimant worked, but left early to visit a doctor.
18. The claimant was absent thereafter.
19. On November 29, 2015, the claimant submitted leave of absence paperwork under FMLA retroactive to October of 2015.
20. The claimant's provider submitted updates. On December 16, 2015, the claimant's provider stated that she will be unable to return to work through the New Year. On January 19, 2016, the claimant's provider stated that the claimant is unable to work due to ongoing issues with anxiety. On February 17, 2016, the claimant's provider stated that the claimant is unable to return to work. On March 15, 2016, the claimant's provider stated that the claimant is unable to work.
21. On March 15, 2016, the employer conducted a management inquiry of the claimant regarding her allegation of a hostile work environment. Based upon the information obtained, the employer concluded that though the Chief of the Division should have not commented that she was late and instead should have asked why she was late, the employer did not find the action to be hostile or discriminatory. The conclusion went on to say, "Whatever the past conflict [the two] had many years ago when they both worked together, [the employer] had a management need to have [the claimant] come to the [Regional Office] to help [in the division] and the fact that [the claimant] is not being allowed to choose her supervisor does not constitute harassment. The fact [the employer] has worked to accommodate [the claimant's] self-proclaimed medical accommodation to have a view of a window, and provided her with an

alternative in the short term does not support her allegations of discrimination.”

22. On March 16, 2016, the Supervisory Program Analyst informed the claimant that she is to be given a workplace with a window view. The employer further explained that her continued absence is uncovered and that the claimant’s provider needed to provide a detailed explanation of the reasons for being out of work for the extended period.
23. On April 28, 2016, the Deputy Regional Chief sent a letter to the claimant explaining that her expected return to work date is May 2, 2016 and that she will provide support two days per week on one department, two days in another, and one day at her permanent office of assignment. The employer also indicated that another person will be her approving authority for her time and attendance.
24. On April 30, 2016, the claimant sent an email to the Deputy Regional Chief stating that it was happy news and that she was looking forward to returning to work and meeting her new direct supervisor. The claimant further explained that she could not return on May 2, 2016 due to a conflict and short notice and that she would like to return to work on May 9, 2016.
25. The Deputy Regional Chief responded on the same day that the employer wants her to return on May 2, 2016 and that the employer will support her leave for appointments per the sick leave policy. The Deputy Regional Chief went on the [sic] explain that if the claimant chooses to return to work on May 9, 2016, she will continue to be on a leave without pay and will need to send sufficient medical documentation to support her absence. The Deputy Regional Chief explained that she will continue to not be compensated and if her medical documentation is insufficient, her absence will be coded as an Absence Without Leave.
26. On May 3, 2016, the claimant resigned for “personal reasons,” that she feels that her career has “reached a standstill,” and that she is “looking to further my knowledge on a career path” that her position “just can’t provide.”

[Credibility Assessment:]<sup>1</sup>

The claimant raised an issue of anxiety, which caused her to be out of work for a significant time period. However, that issue seemingly became less significant and no longer compelled her to be absent as evidenced by the final communications leading up to her would-be return to work and ultimately the claimant’s resignation. In the end, the claimant commented that she was happy and looking forward to returning to work, but upon learning that she could no

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<sup>1</sup> We have inserted here the review examiner’s credibility assessments, which were integrated into the Conclusions & Reasoning section of his decision.

longer delay her return to work date, the claimant chose to resign for personal reasons. In such a case, the claimant's resignation was not involuntary within the meaning of the law.

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The claimant presented a medical issue, which caused her to be absent for a significant time period and the claimant attributed that medical issue to her work. Such attribution was not found to be convincing. The claimant seemingly worked herself into anxiety over being reunited with her former supervisor after ten years. The ultimately [sic] claimant began such work and the only negative interaction was when the supervisor stated the obvious after the claimant reported late on her first day without any notice. Other than that, the claimant raised no significant issue that would objectively cause one to be absent for several months for anxiety. As discussed above, the claimant ultimately stated that she was happy and looking forward to returning to work, which is evidence that any issue she had keeping her away from work was resolved to her satisfaction. Only when the employer reasonably denied her any further extensions to her leave of absence without further medical documentation demonstrating a necessity, did the claimant resign. But such resignation was not for anxiety or something the employer did to give her good cause for doing so. The claimant, as stated in her letter of resignation, resigned for personal reasons with a feeling that her career was stagnant. Such a resignation is voluntary and for general dissatisfaction and not for good cause.

### Ruling of the Board

In accordance with our statutory obligation, we review 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 ultimate conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. We clarify Finding of Fact # 6 to add that the claimant's September 28, 2015, medical document that appears to be written on a prescription notepad was from her physician and it explained that the claimant needed to be near a window due to a medical diagnosis of claustrophobia.<sup>2</sup> To the extent that Finding of Fact # 16 infers that the claimant reported to the on-site nurse on October 29, 2015, for reasons that did not constitute stress, we reject this inference as unsupported by the record. Finding of Fact # 23, which summarizes an April 28, 2016, employer letter to the claimant, fails to mention the important fact that the employer had assigned a new, temporary supervisor to the claimant. Finding of Fact # 26 is accurate only insofar as it quotes part of the claimant's resignation letter. It is inaccurate to the extent that it ignores substantial medical evidence showing that mental health issues caused the claimant's separation, as explained more fully below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, we reject the review examiner's legal conclusion that the claimant is ineligible for benefits.

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<sup>2</sup> See Exhibit 9. While not explicitly incorporated into the review examiner's findings, this exhibit 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).

Because the claimant resigned from her job, her eligibility for benefits must be analyzed under 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.

The express language in these statutory provisions places the burden of proof upon the claimant.

First, it is important to be clear about why the claimant resigned. The review examiner decided that her resignation had nothing to do with work or any medical issues, characterizing it as merely a personal decision connected to career stagnation. His conclusion rests upon generic statements written in the claimant's letter of resignation. *See* Finding of Fact # 26. He disregards all of the evidence in the record demonstrating that the claimant's decision was driven by an uncontrolled medical condition that rendered her unable to return to work on the employer's terms.

In order to decide whether 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). During the hearing, the claimant described some of her experiences with her former supervisor, the Division Chief, including his belittling, berating, and accusatory behavior. *See* Finding of Fact # 3. Because she successfully transferred to another department, the claimant had been able to avoid him and continue working for the employer for another 10 years. However, in September, 2015, the employer decided to re-assign her to this supervisor several days a week for a one-year detail. *See* Findings of Fact ## 2 and 5. As the review examiner found, the claimant began experiencing anxiety. Finding of Fact # 4. The claimant testified that, upon being told of the re-assignment, she immediately started to cry.<sup>3</sup> Indeed, during her first week on this detail, the supervisor let her know that he was displeased that she arrived after 9:00 a.m. on the first day, and that she missed a meeting on the second day. *See* Findings of Fact ## 10 and 14. As the findings show, the claimant left work for doctors' appointments twice that week and did not return. Findings of Fact ## 13, 17 and 18.

The undisputed evidence in the record shows that the claimant was experiencing more than a little anxiety. She took a Family Medical Leave of Absence (FMLA). Finding of Fact # 19. In the FMLA application, her therapist explained that the claimant was too anxious to work due to a panic disorder with uncontrollable bursts of crying, and that she had been prescribed anti-anxiety medication. *See* Exhibit 14. Regular medical updates thereafter show that the claimant remained unable to work while actively treating her anxiety disorder. *See* Exhibits 3, and 15–18. In one of these letters to the employer, dated March 22, 2016, the claimant's therapist explained that her

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<sup>3</sup> This is also part of the undisputed testimony in the record.

anxiety disorder was real, with medical symptoms, seemed specifically related to the supervisor that had been assigned to her for the year-long detail, that she should have no contact with him, and that she needed a different supervisor.<sup>4</sup>

Despite all of this unchallenged, competent medical evidence in the record, the review examiner decided that her anxiety was not so severe as to require the claimant to be absent for several months and that her medical issues were not tied to her work. In doing so, he improperly substituted his own judgment for those of medical providers. As we have previously stated, “a review examiner’s obligation to resolve factual conflicts and assess credibility of witnesses . . . does not extend to rejecting uncontroverted medical evidence.” Board of Review Decision BR-110773 (Jan. 27, 2010).

To be sure, upon receiving the employer’s April 28, 2016, letter notifying her that the employer had assigned her a new supervisor, the claimant’s response that this was happy news and that she was looking forward to returning to work to meet him, was, no doubt, genuine. *See* Finding of Fact # 24. However, the claimant also testified that, after seven months away from work, she needed more than three days’ notice to make the transition back, as she was in a very dark place, still experiencing depression and anxiety, and needed a week to meet with her doctors and pull herself together.<sup>5</sup> Without explanation, the review examiner ignored this testimony.

On balance, we agree that the claimant did not show that her departure was for good cause attributable to the employer. Although the medical evidence connected her disability to a supervisor, the evidence shows that, upon receiving medical documentation, the employer granted her a requested FMLA and ultimately replaced her supervisor. We also cannot say that its offer to allow her to use sick time for scheduled medical appointments in lieu of an additional week off was unreasonable in light of what the claimant had communicated to them.

However, we do believe the claimant has shown that she left work due to urgent, compelling, and necessitous circumstances. “[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). Medical conditions are recognized as one such reason. *See* Dohoney v. Dir. of Division of Employment Security, 377 Mass. 333, 335–336 (1979). The claimant has presented substantial evidence, described above, to support her testimony that a mental health condition rendered her unable to return to work by the employer’s deadline.

To qualify for benefits, a claimant who resigns from employment 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 v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 766 (2009), *quoting* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597–598 (1974). Here, the record shows that the claimant took advantage of an FMLA, asked for a

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<sup>4</sup> *See* Exhibit 3. Exhibit 3, the FMLA application, the doctor’s notes, and the therapist letters (Exhibits 13–18) were introduced as evidence by the employer and are not in dispute.

<sup>5</sup> The employer declined to challenge or cross-examine the claimant on this additional testimony.

change of supervisor, and sought the additional week extension of her leave that she needed. In light of her condition, we are satisfied that these attempts to preserve her employment were reasonable.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she left work involuntarily for urgent, compelling, and necessitous reasons within the meaning of G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning May 3, 2016, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 18, 2019**



Paul T. Fitzgerald, Esq.  
Chairman



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT  
COURT OR TO THE BOSTON MUNICIPAL 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](http://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.

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