

Board of Review
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Issue ID: 0002 4225 53

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Wayne Robinson, 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 December 28, 2012. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on April 2, 2013. 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 May 24, 2013.

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) and 25(e). 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 take additional evidence, specifically regarding the claimant's attempts to preserve her job. Both parties attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.¹

The issue before the Board is whether the review examiner's initial conclusion that the claimant is disqualified from receiving benefits is based on substantial and credible evidence and free from error of law, where the review examiner found that the claimant had to temporarily move to Nevada to care for her mother, and that her requests for a leave of absence or part-time work were denied by the employer.

Findings of Fact

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

1. The claimant worked as a full-time Ophthalmic Technician with the employer's eye care practice from July 23, 2012 until December 28, 2012.

¹ The decision is being issued at this time due to a considerable delay in the scheduling of the remand hearing.

2. The claimant resigned to temporarily relocate to Nevada to care for her ailing mother.
3. The claimant traveled to Nevada for one month of weekends, leaving Fridays and returning to work at 8:30 am Mondays.
4. The claimant tried to travel to Nevada and still keep her job. She requested a month off of her Manager. She also requested a temporary part-time schedule of work. Neither request was granted by the employer, because the claimant was not eligible for Family Medical Leave (FMLA). The claimant also bid on another position offered by the employer, but the employer opted to select a better-qualified candidate over the claimant.
5. The claimant decided that she could not continue traveling to Nevada and still keep her job, because the pace was grueling, and because she had received verbal and written warnings for tardiness in reporting to work from her Manager, caused by her travel schedule. The claimant provided written notice of her intent to resign from her job to her immediate supervisor on December 7, 2012. The claimant was not eligible for Family (FMLA) leave.
6. The employer did nothing to prompt the claimant's resignation from employment.

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 that the claimant is not entitled to benefits is free from error of law. Upon such review, and as discussed more fully below, the Board adopts the review examiner's consolidated findings of fact. In adopting the findings, we deem them to be supported by substantial and credible evidence. However, based on the entire record after remand, we conclude that the claimant should not be disqualified from receiving benefits.

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

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for . . . [T]he 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

G.L. c. 151A, § 25(e), provides in pertinent part, as follows:

An individual shall not be disqualified from receiving benefits under the provisions of this subsection, if such individual establishes 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 both of these statutory provisions, the claimant has the burden to show that she is entitled to benefits.

As an initial matter, the findings of fact do not support a conclusion that the claimant quit her job for good cause attributable to the employer. Indeed, the review examiner specifically found that the employer did nothing to prompt the claimant's resignation. On the contrary, the claimant's reasons for leaving were entirely personal and had to do with caring for her mother.

The more appropriate question to be addressed is whether the claimant quit her job involuntarily for urgent, compelling, and necessitous reasons. "A 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons under the above statutory provision." Norfolk County Retirement System v. Dir. of Department of Labor & Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), *quoting* Reep v. Comm'r of Department of Employment & Training, 412 Mass. 845, 847 (1992). To evaluate whether the claimant's reasons for leaving work were urgent, compelling, and necessitous, we must examine the circumstances and evaluate "the strength and effect of the compulsive pressure of external and objective forces" on the claimant to ascertain whether the claimant left his job involuntarily. *See* Reep, 412 Mass. at 848.

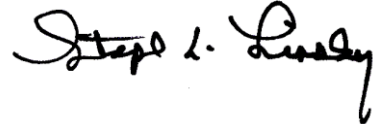
The review examiner found that the claimant had to temporarily relocate to Nevada to care for her ailing mother. The Supreme Judicial Court has stated that "a person who is forced to leave work because of compelling personal circumstances has left work involuntarily and is not subject to temporary disqualification under G. L. c. 151A, Section 25(e)(1)." Dohoney v. Dir. of the Division of Employment Security, 377 Mass. 333, 335 (1979). "[D]omestic responsibilities," such as child care, "may constitute urgent and compelling reasons which make a resignation involuntary." Manias v. Dir. of the Division of Employment Security, 388 Mass. 201, 204 (1983). We discern no meaningful distinction between a situation in which a mother or father must leave work to care for children and one in which a grown son or daughter is forced to leave work to care for an ailing parent. Accordingly, we conclude that the circumstance confronting the claimant in this case was urgent, compelling, and necessitous.²

Moreover, the claimant made the requisite reasonable attempts to preserve her job. Findings of Fact # 4 and # 5 show a clear intent by the claimant to try to keep her job. She attempted to keep her job and travel to Nevada for about one month before deciding that it was not going to work. She asked to be a part-time employee, so that she would no longer receive discipline for being late to work. This was denied. She asked for a leave of absence, but this was also denied. These efforts indicate that the claimant reasonably tried to stay employed but found that she could not do so.

² Although the review examiner made no findings regarding the nature of the claimant's care for her mother, the claimant testified that her mother had a stroke, and she needed to coordinate doctors' visits for her mother. Since the claimant was her guardian, the claimant was the only one who could do this for her mother. Also, the claimant testified that she had to take time to find a facility for her mother to live.

We, therefore, conclude as a matter of law that the review examiner's original decision was based on an error of law, because the claimant's need to care for her mother in Nevada constituted an urgent, compelling, and necessitous reason for leaving her job; and she made adequate efforts to preserve her job.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending January 19, 2013, and for subsequent weeks if otherwise eligible. As long as the employer has complied with all requirements of the law, it may be relieved of charges pursuant to G.L. c. 151A, § 14(d)(3).



Stephen M. Linsky, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 23, 2014



Judith M. Neumann, Esq.
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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.

SF/rh