

**Board of Review
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Issue ID: 0002 4578 04

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Jennifer J. Rainville, 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 April 26, 2013. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on June 13, 2013. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on August 12, 2013. 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 and without urgent, compelling, and necessitous reasons and, thus, 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 that the claimant did not have urgent, compelling, and necessitous reasons to resign, in order to care for her ailing 90-year old grandmother, is supported by substantial evidence and free of error of law.

Findings of Fact

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

1. The claimant worked for the employer, a hospital school department of public health, from September 1, 2007 to April 26, 2013, when the claimant was separated from her employment.
2. The claimant worked full time, Monday to Friday, 8:00A.M. to 4:00P.M., and her annual rate of pay was \$48,000.00.
3. The claimant's grandmother is the woman that raised her. The claimant's grandmother lives in New Jersey.

4. In January 2013, the claimant's grandmother, age 90, had heart surgery.
5. Immediately following surgery, the claimant's grandmother became ill with pneumonia.
6. The claimant wanted her grandmother to live with her in Massachusetts so she could take care of her. The grandmother's pneumonia scared the claimant because her grandfather had previously passed away after having pneumonia for a week.
7. On February 4, 2013, February 18, 2013, and February 22, 2013, the claimant spoke with her immediate supervisor, the Safety Director about taking a leave of absence so she could care for her grandmother.
8. The Safety Director told the claimant that she was not eligible to take a leave of absence to care for her grandmother. He told the claimant that she was able to use any of her own accrued sick and personal leave to take time off.
9. The Safety Director made comments to the claimant about how he took care of his sick parents and still managed to work every day. He also suggested to the claimant that if she needed to care for her grandmother then she could quit and apply again for a position at a later time.
10. On March 7, 2013 and April 3, 2013, the claimant spoke with a more senior manager ("CEO") who informed her that she had no other options but to speak with her union representative.
11. On March 22, 2013, April 18, 2013, and April 19, 2013, the claimant's union representative also informed the claimant that she had no leave to take and suggested that she quit if she needed to care for her grandmother.
12. On unknown dates after the claimant's grandmother became ill with pneumonia, the claimant went to New Jersey on the weekends to visit her grandmother.
13. The claimant returned to Massachusetts during the week because her three children needed to attend school.
14. On April 26, 2013, the claimant quit her employment to care for her grandmother.
15. As of April 26, 2013, the claimant's grandmother was still living in New Jersey in her own home. The claimant's aunt was living with her.
16. The claimant's grandmother was still wheezing from the pneumonia.

17. The claimant did not move her grandmother in April 2013, because she was trying to get some of her grandmother's affairs in order, i.e. talk to a realtor to sell the grandmother's house, transfer the grandmother's banking.
18. The claimant continued to return to Massachusetts during the week because her three children needed to attend school.
19. The claimant's cousin told the claimant that neither her aunt nor her cousin wanted to care for her grandmother and that she needed to be placed in a nursing home to receive care.
20. As of the date of the hearing, July 23, 2013, the claimant's grandmother was living in New Jersey.
21. The claimant's grandmother had not yet moved to live with the claimant because her health began to improve at the end of June 2013.

Ruling of the Board

In accordance with our statutory obligation, we review the review examiner's findings of fact to determine: (1) whether these findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion that the claimant is disqualified from receiving benefits is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we disagree with the review examiner's conclusion that the claimant failed to show urgent, compelling, and necessitous reasons for quitting her employment.

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

Also relevant to our analysis is G.L. c. 151A, § 25(e), which provides in relevant 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.

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 (1991). In the present appeal, the review examiner concluded that the claimant had failed to show urgent, compelling, and necessitous reasons for resigning on April 26, 2013; because, at the time, the claimant’s grandmother had not actually moved to Massachusetts, and there was not an urgent need for the claimant to provide the grandmother with daily care in New Jersey.

The findings provide that the claimant’s 90-year-old grandmother did require daily care. She had had heart surgery in January, became ill with pneumonia immediately following surgery, the grandmother was still wheezing in April, and the claimant’s cousin had informed the claimant that the grandmother needed to go to a nursing home because neither the cousin nor her aunt wanted to care for the grandmother any longer. Additionally, the claimant testified that her grandmother needed help with bathing, going for medical tests and doctors’ appointments, and comfort and reassurance because her grandmother believed she was going to die.¹

It makes no difference whether the claimant’s grandmother eventually moved to Massachusetts, or whether her health eventually improved, as noted in finding of fact #21. The standard is whether the claimant acted reasonably based upon pressing circumstances *at the time* of her resignation.

The findings also show that the claimant tried to preserve her job before quitting. She had used up all of her accrued time off to go to New Jersey to care for the grandmother and tried to get a leave of absence in lieu of resigning — appealing to her immediate supervisor, the employer’s CEO, and her union representative — without success. Under these circumstances, the claimant has shown urgent, compelling, and necessitous reasons for separating from employment on April 26, 2013.

We, therefore, conclude as a matter of law that the claimant’s separation from employment was due to urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e).

¹ The claimant’s detailed testimony about the type of care her grandmother needed, 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 Director of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending May 4, 2013, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 31, 2013



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.

AB/rh