

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Stephen M. Linsky, Esq.
Member
Judith M. Neumann, Esq.
Member

Issue ID: 0002 4280 21

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Joan Berube, 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 November 10, 2012. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on February 20, 2013. The claimant 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 denied benefits in a decision rendered on March 22, 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 regarding the claimant's mental state when she resigned her position on November 10, 2012. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. After reviewing the consolidated findings of fact, we remanded the case once again to the review examiner, this time for subsidiary findings from the record, to clarify again what happened on November 10, 2012. The review examiner then issued a second set of 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 original conclusion to deny benefits is supported by substantial and credible evidence and free from error of law, where the review examiner's consolidated findings of fact show that, at the time that the claimant quit her position on November 10, 2012, she was taking pain medication for liver disease that impaired her ability to think rationally about quitting her job.

Findings of Fact

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

1. The claimant worked full-time in a clerical position for a client company of the employer, a staffing business, from 5/9/11 until 10/29/12. The claimant

worked from 8:00am until 5:00pm on Mondays through Fridays and was paid \$19 per hour.

2. The claimant was absent from work due to illness from 10/29/12 through 11/9/12. The claimant notified the employer and her supervisor at the client company of her absence. The claimant underwent medical tests, including a biopsy, during her absence. The claimant informed her supervisor at the client business that she had liver disease.
3. During the week that ended on 11/10/12, the supervisor at the client company asked the employer's account manager to reach out to the claimant to find out how long she expected to be out sick and whether or not she would return to work. The account manager attempted to reach the claimant by voice mail and email messages to find out her intentions.
4. On 11/10/12, the claimant received the account manager's voice mail message, indicating that she would lose her position at the client business unless she returned to work. The claimant became angry after hearing the message and called the account manager's phone. The claimant recorded a message, stating: "Hey (account manager), this is (claimant). It's Saturday morning, um, the 9th, I think it is. I quit, as of Friday. That is if you guys haven't terminated me already. I'm home. Bye." The claimant made the call because she was angry. The claimant was upset that the manager would threaten her by stating that she would lose her job if she didn't go to work. The claimant was aware that she was quitting her job by saying this in her message.
5. The claimant did not make a second call to the employer on 11/10/12.
6. The claimant was taking pain medication on 11/10/12 which can affect thinking and cause disorientation. The claimant was not thinking clearly when she resigned her position on 11/10/12 because she was angry and taking medication. The claimant's medication and illness significantly impaired her ability to make a rational decision about quitting her job.
7. On 11/12/12, the claimant felt better and decided she shouldn't have quit on 11/10/12. The claimant contacted her supervisor at the client company by email and explained that she quit by voice mail on Saturday, 11/10/12, but wanted to return to work. The supervisor told the claimant that the account manager had already contacted him and paper work related to the claimant's separation had been processed. The claimant contacted the account manager after speaking with the supervisor. The employer did not rescind the claimant's resignation.
8. On 11/28/12, the claimant filed a claim for unemployment insurance benefits.

9. On 2/20/13, the DUA issued a Notice to Claimant of Disqualification, finding the claimant ineligible for benefits under Section 25(e)(1) of the law.
10. On 2/23/13, the claimant appealed the Notice.
11. On 2/28/13, the claimant obtained a letter from her physician. The physician wrote that he had been seeing the claimant since 10/23/12 for a “stable medical condition”.

Ruling of the Board

In accordance with our statutory obligation, we review the consolidated findings of fact 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. We conclude, however, that the claimant separated from her position involuntarily, pursuant to G.L. c. 151A, § 25(e).

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 these sections of the law, the claimant has the burden to show that she is entitled to benefits. In her decision rendered on March 22, 2013, the review examiner concluded that the claimant had not quit her job for good cause attributable to the employer. We agree. The review examiner found that the claimant had been absent from work from October 29, 2012, through November 9, 2012. On November 10, 2012, the employer called the claimant to inquire as to when she was going to be returning to work. There was nothing unreasonable about the employer’s conduct in doing this. It was trying to ascertain the claimant’s status as an employee who had not worked for an extended period of time.

Rather, the circumstances of the claimant’s separation, including the facts that the claimant had liver disease and was taking medications which affected her mental state, implicate G.L. c. 151A, § 25(e). “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 Dep’t of Labor & Workforce Dev., 66 Mass. App. Ct. 759, 765 (2009), *quoting* Reep v. Comm’r of Dep’t 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 her job involuntarily. *See* Reep at 848.

In this case, the review examiner found that the claimant was taking pain medications on November 10, 2012, the day she resigned from her job. She also found that this medication “significantly impaired [the claimant’s] ability to make a rational decision about quitting her job.” *See* Finding of Fact # 6. Given this very clear finding as to the claimant’s mental state on November 10, we conclude that the claimant was not acting voluntarily when she resigned her job.

It appears from the findings of fact that after the claimant heard the voice mail message from the account manager, she believed that she may already have been terminated. When she called the account manager, she left a message that she quit if the employer had not already terminated her. The review examiner noted, however, that the decision to quit was arrived at while claimant’s faculties were impaired. Since the irrational nature of her conduct was caused, in whole or in significant part, by the medication, we cannot conclude that the separation was a voluntary one. The claimant acted involuntarily, under the above-noted circumstances, when she quit on November 10.

We also conclude that the claimant’s state of mind on November 10 indicates that, even if the claimant was aware of her obligation under the law to try to preserve her employment, *see* Norfolk County Retirement System, 66 Mass. App. Ct. at 766, she would not have been able to do so. Therefore, she cannot have been expected to make efforts to preserve her job prior to quitting.

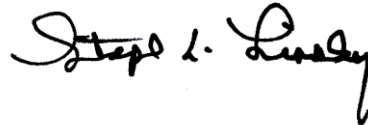
We, therefore, conclude as a matter of law that the review examiner’s original decision to deny benefits was based on an error of law, because the claimant separated from her job involuntarily, and, thus, is eligible for benefits, under G.L. c. 151A, § 25(e).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending November 24, 2012, and for subsequent weeks if otherwise eligible. Pursuant to G.L. c. 151A, § 14(d)(3), the costs of benefits paid to the claimant on this claim shall not be charged to the employer's account.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 13, 2014



Paul T. Fitzgerald, Esq.
Chairman



Stephen M. Linsky, Esq.
Member



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