

**Board of Review  
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**Issue ID: 0002 1459 34**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by Christopher P. Renaud, 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 September 5, 2012. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 20, 2012. 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 April 10, 2013. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant voluntarily left employment without urgent, compelling, and necessitous reasons and, thus, was 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 claimant's appeal, we afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Both parties responded. 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 conclusion that the claimant's failure to request a non-FMLA leave of absence constituted a failure to take reasonable steps to preserve her employment under G.L. c. 151A, Section 25(e), is supported by substantial and credible evidence and is 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 full-time as an intensive care coordinator for the employer, a care center for individuals with mental health and/or substance abuse issues, from 12/03/11 until her separation on 09/05/12.

2. The claimant's job required her to work with individuals suffering from mental health and/or substance abuse issues and develop plans to help the individuals with their lives.
3. The claimant has been treated for depression since 2007 (Exhibit #4).
4. In December 2011, the claimant learned of her sister's heroin addiction.
5. Shortly after learning of her sister's addiction, the claimant's depression worsened.
6. The claimant felt that her job and personal life were becoming too stressful, as she was dealing with the same issues in both the workplace (with her clients) and at home (with her sister).
7. The claimant told her supervisor about her personal issues. The claimant also informed her supervisor of her belief that she would need to leave her job.
8. In August 2012, the claimant's treating doctor advised her to take three months off from work, while her medication was adjusted.
9. The claimant did ask a Human Resources representative if she was eligible for a Family Medical Leave Act (FMLA) leave, but was told that she did not qualify due to her length of employment.
10. The claimant did not request a three-month leave of absence from the workplace, nor did she indicate to her employer that her doctor had requested a leave of such length.
11. Prior to the claimant's resignation, her supervisor inquired about the length of time the claimant would need, as she (supervisor) wanted to look into some options that could potentially allow for the claimant to continue her employment. The claimant told the supervisor that she did not know how long she would need to be away from the job.
12. On 09/05/12, the claimant provided a letter of resignation indicating that she was leaving the job immediately (Exhibit #3).
13. No medical documentation was presented to indicate that a physician instructed or advised the claimant to leave her employment prior to 09/05/12.
14. Work remained available to the claimant at the time she left her job.

### Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine whether: (1) the findings of fact are supported by substantial and credible evidence; and (2) the

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, except we supplement findings #7 and #11 with the following uncontested evidence.<sup>1</sup> We supplement finding #7 to further find, in accordance with both the claimant's and the employer's program director's testimony, that the claimant specifically informed the program director that the claimant was increasingly struggling with her depression. We also supplement finding #11 to further find that, in accordance with the employer's program director's testimony, the program director did not believe she offered the claimant the option of a non-FMLA leave of absence, as the employer could not offer a non-FMLA leave if the claimant did not provide a return to work date. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence.

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.

The review examiner found that in August 2012, the claimant's doctor advised her to take three months off from work while her medication was adjusted. The review examiner also found that the claimant asked a human resources representative whether she was eligible for a leave of absence under the Family Medical Leave Act (FMLA), and that she was told she did not qualify due to the length of her employment. After being told that she did not qualify for an FMLA leave, the claimant did not ask for a non-FMLA three-month leave of absence. Instead, she submitted her resignation to the employer.

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 to evaluate "the strength and effect of the compulsive pressure of external and objective forces" on the claimant and 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). Furthermore, to be eligible for benefits, an employee is expected to make reasonable attempts to preserve her employment, but is not required to request a transfer to other work or a leave of absence. Guarino v. Director of Division of Employment Security, 393 Mass. 89, 94 (1984).

The review examiner concluded that, because the claimant did not request a three-month leave of absence, she failed to establish that she left her employment for urgent, compelling, and necessitous reasons. We disagree.

The findings establish that the claimant had a pressing and compelling reason which required her to take time off from work and ultimately to resign from employment; namely, the adjustment of

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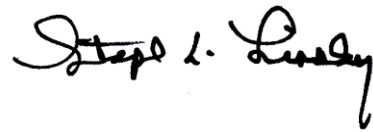
<sup>1</sup> See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Director of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

her medication to treat her depression. Furthermore, the evidence in the record establishes that the claimant took reasonable steps to preserve her employment prior to resigning. We have supplemented the findings to note that the claimant made her supervisor aware that she (the claimant) was suffering from depression, and, in light of her inquiry relative to an FMLA leave, that she had a medical issue which required her to take time off from work. Under the law, a claimant need not exhaust every option available to her prior to resigning from her employment. See Guarino, 393 Mass. 89, 94. The employer was alerted as to the claimant's medical problem and knew that she wanted to take a leave of absence to deal with that problem. Yet, there is no evidence in the record that either the claimant's supervisor or the human resources representative offered the claimant the option of a non-FMLA leave of absence or even explained to her what specific information she needed to provide the employer in order to qualify for such a leave.

Indeed, as supplemented by this decision and discussed above, Finding # 11 now indicates that the employer did not believe it could offer a non-FMLA leave of absence in claimant's situation. On this record, the claimant did what she reasonably believed was necessary to preserve her job when she requested a leave under the FMLA, and we cannot conclude that it was necessary for her to also inquire about a non-FMLA leave in order to preserve her job. Id.

We, therefore, conclude as a matter of law that the claimant is entitled to benefits under G.L. c. 151A, § 25(e), because she involuntarily resigned from her employment for urgent, compelling, and necessitous reasons, and she took reasonable steps to preserve her employment.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending September 29, 2012, and for subsequent weeks if otherwise eligible.



Stephen M. Linsky, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION – January 10, 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.

SVL/rh