

**Board of Review  
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**Issue ID: 0002 3797 42**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by J.P. Sliker, a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. Benefits were denied on the ground that the claimant voluntarily left employment without either good cause attributable to the employer or urgent, compelling and necessitous reasons, pursuant to G.L. c. 151A, § 25(e)(1).

The claimant had filed a claim for unemployment benefits, which was denied in a determination issued by the agency on December 4, 2012. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on April 25, 2013. The claimant sought review by the Board, which denied the appeal; and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On November 14, 2013, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the review examiner to take additional evidence concerning the claimant's reason for leaving her employment. Only the claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact.

After reviewing the entire record, including the District Court's Order and the consolidated findings of fact, we reverse the review examiner's decision.

The issue on appeal is whether the review examiner's conclusion that the claimant did not leave her job for urgent, compelling, and necessitous reasons, under G.L. c. 151A, § 25(e), is supported by substantial and credible evidence and is free from error of law, where the consolidated findings of fact reflect that the claimant quit because she had significant health-related concerns about the conditions in the workplace.

### Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant worked as a broker for the employer, an insurance agency. She began work for the employer on July 18, 2011. She worked full-time, Monday through Friday, from 9 am to 5 pm.
2. The employer is located in an older commercial building in Lynn, Massachusetts. The employer president is the building owner.
3. The building's roof leaks when it rains, resulting in visible water stains on the ceiling tiles, crumbling ceiling tiles, and residue on the walls. During rainstorms water drips into the office.
4. In early February, 2012, the claimant learned she was pregnant with a due date of October 23, 2012.
5. The claimant has diabetes. The claimant's physician informed her that because she has diabetes she had a high risk pregnancy.
6. On February 22, 2012, the claimant informed her supervisor, the president, that she was pregnant and would need to see her physician frequently.
7. On or about the end of April, 2012, the weather was rainy. The claimant began to smell a musty odor at the employer. She also started to have headaches and heaviness in her chest.
8. On April 30, 2012, the claimant had a headache and heaviness in her chest. She complained to the human resources (HR) manager about her symptoms. She was allowed to leave work for the day. The claimant's symptoms went away after she left work.
9. On May 1, 2012, it rained. The claimant had a headache and heaviness in her chest.
10. The claimant called her physician. She told her physician of her symptoms and the smell at the employer.
11. The physician told the claimant that if there was mold there was a risk to the health of her baby, which increased with prolonged exposure.
12. The physician advised the claimant to contact OSHA (Occupational and Safety Health Administration).
13. The claimant left work early on May 1, 2012. She felt better after she left the office.
14. The claimant filed a complaint with OSHA.

15. The claimant sent an email to the president informing him of her symptoms. She attached an article on the link between Black Mold and pregnancy. She asked the president what he was going to do about it.
16. The president responded he would perform tests and get back to her a few days later.
17. Over the weekend of May 4, 2012, the president placed testing apparatus in the office. The testing result was negative for mold.
18. The president did not get back to the claimant. When the claimant asked him about the tests, the president told her they were negative, but refused to show her the results.
19. On May 22, 2012, the claimant left work early because of heaviness in her chest. She visited two emergency rooms.
20. She was not diagnosed with a chronic illness. She was discharged with instructions to follow up with her physician.
21. The president made repairs to his roof and purchased a single dehumidifier, which he installed at the employer.
22. Based on a letter from the president, and the president's reported testing results, OSHA closed the case with the employer. OSHA informed the claimant of this in a letter dated May 30, 2012.
23. The claimant did not appeal the OSHA letter because she felt their initial response was inadequate as, to her knowledge, OSHA had never visited the building and dismissed the case based on the president's assurances that he had investigated and rectified the situation. However the claimant never saw the result of the mold test and was doubtful that the situation had been fixed, as the president told OSHA.
24. In the period of May, 2012, through August, 2012, the claimant's symptoms were not as severe.
25. The claimant offered to work from home, but the president rejected this proposal.
26. The claimant did photograph water damage at the employer.
27. During the summer two tenants who shared the building moved out. The claimant heard they moved out because of office conditions.
28. The claimant continued to feel concern about her pregnancy because she believed the workplace environment was going to affect her and her child.

29. On August 29, 2012, the claimant had an ultrasound. The ultrasound showed that the claimant's unborn child had an enlarged blood vessel in his brain. Physicians wanted to conduct an MRI as a follow-up. The claimant refused the MRI out of concern that the examination may not be safe for her unborn child.
30. The claimant feared the abnormalities in her child's brain may have resulted from prolonged exposure to mold in her workplace.
31. On September 10, 2012, the claimant called out sick.
32. On September 12, 2012, the claimant asked to speak with the president. The president was taking some time off and told the claimant he would return on September 18, 2012. The claimant told him she would wait until then.
33. On September 18, 2012, the claimant met with the president. The claimant complained about, among other things, her health concerns regarding mold in the office and its effect on her baby. The president said to the claimant: "Sweetheart, the problem is that you're delusional."
34. Because of continued concerns about the health of her baby, and her own health, the claimant decided to leave her job.
35. Because of her high risk pregnancy, her observations of conditions at the workplace, the information regarding the risk of black mold she received from her physician, her physical symptoms, and the ultrasound results, the claimant's concerns about the health of her baby, and her own health, are reasonable.
36. On September 21, 2012, the claimant e-mailed her resignation to the president. The claimant cited in her letter of resignation her concern for the health of her unborn child.

### Ruling of the Board

In accordance with our statutory obligation, we review the examiner's decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether 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, with the exception of Finding #35, which is in the nature of a legal conclusion rather than a finding of fact. In adopting these findings, we deem them to be supported by substantial and credible evidence. However, the consolidated findings do not sustain the examiner's initial conclusion that the claimant should be disqualified from benefits.

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.

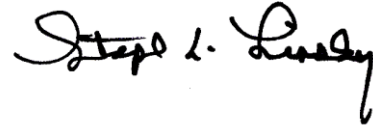
The review examiner's consolidated findings establish that the claimant had a legitimate health concern, which prompted her leaving. Those findings reflect that the claimant began experiencing symptoms such as headaches and chest heaviness around the time that she first detected a musty odor at the workplace. The workplace had a leaky roof, water stained and crumbling ceiling tiles, and residue on the walls. The claimant complained to the employer and OSHA in May of 2012. This led to the president making repairs to the roof and installing a dehumidifier. Subsequently, the claimant's symptoms improved but did not go away, and she only found complete relief when she was outside of the work place. On August 29, 2012, the claimant learned that her unborn child had an enlarged blood vessel in his brain. The claimant became concerned that the conditions in the workplace were now affecting not only her health but that of her unborn child. The claimant submitted her resignation on September 21, 2012, after her complaint to the employer about her continuing health concerns was not addressed.

In order to qualify for benefits, under G.L. c. 151A, § 25(e), the claimant need not establish that her health issues were in fact caused by the conditions in the workplace, but rather that her belief that this was so was reasonable. *See Carney Hospital v. Dir. of the Division of Employment Security*, 382 Mass. 691 (1981) (rescript opinion) (leaving work under a reasonable belief that her skin infection was caused by her work environment was sufficient to support a conclusion that the claimant's separation was involuntary, under G.L. c. 151A, § 25(e)(1)). The reasonableness of the claimant's concerns is a question of law. *See Ducharme v. Comm'r of Department of Employment and Training*, 49 Mass. App. Ct. 206, 208 (2000) (whether employer acted reasonably is the application of law to facts).

The claimant's health concerns were reasonable in light of the totality of the evidence in the record after remand. Although the employer took steps to correct the problems with the leaky roof, the claimant's symptoms persisted afterwards, even if less severely. In addition, the claimant had a reasonable concern that lingering mold in the work place could be harming her unborn child. Furthermore, the findings establish that the claimant took reasonable steps to preserve her employment when she complained to the owner about her health concerns in September of 2012, and he refused to acknowledge them. *See Guarino v. Dir. of Division of Employment Security*, 393 Mass. 89, 93 (1984).

We, therefore, conclude as a matter of law that the claimant left her employment for urgent, compelling and necessitous reasons.

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 – May 6, 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