Board of Review
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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 March 19, 2013. She filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on April 30, 2013. The employer appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the employer, the review examiner overturned the agency's initial determination and denied benefits in a decision rendered on November 25, 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 or urgent, compelling, and necessitous reasons and, thus, was disqualified, under G.L. c. 151A, § 25(e)(1). 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 allow the claimant, who was unable to participate in the original hearing, the opportunity to present testimony and evidence. 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.

The issue before the Board is whether the review examiner's conclusion, that the claimant quit her employment voluntarily without good cause or urgent, compelling, or necessitous reasons when she declined to return to work after maternity leave, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant, a single parent, worked as a full-time Administrative Assistant with the employer's amusement park business from February 25, 2008 until March 19, 2013. She earned 32,000 per year.

2. The claimant was forced to leave her job because she could not afford childcare services.

3. The claimant took an approved maternity leave beginning January 4, 2013. She was scheduled to return to work from maternity leave on March 24, 2013.

4. The claimant sent the following e-mail to the employer on March 19, 2013: "I regret to inform you that as of today March 19, 2013 I am resigning from my position at [Employer], I have given a lot of thought to this decision, and have based it upon the current cost of daycare, fuel, etc. and determined that it would make most financial sense for me and my family to stay home and raise my child. I have enjoyed my time with [Employer] and would like to thank you for giving me the opportunity to be part of your team. If anyone has any questions, or needs any assistance please feel free to contact me. I can clean out my office whenever it's convenient for Chuck. Sincerely, (claimant's first name)"

5. The claimant did not return to work following the leave of absence.

6. The claimant did not return to work because she could not afford the added cost of childcare. [Her] weekly net [income] was $300, and she paid $120 per week for gas enabling her to commute to and from the workplace.

7. The claimant looked for affordable daycare, including at The Learning Center of Wilbraham and Springfield Daycare Center. The claimant found she could not afford daycare, which cost $325 to $350 per week.

8. The employer has an Employee Assistance Plan with daycare assistance. The claimant did not request help via EAP.

9. The claimant had a history of merit pay increases ranging from two to three percent per year, but not enough enabling her to afford daycare.

10. The employer did nothing to prompt the claimant's resignation.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant left her employment voluntarily without urgent, compelling, or necessitous reasons.

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 . . . the 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 . . . No disqualification shall be imposed if such individual establishes . . . 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 & Training, 412 Mass. 845, 848, 851 (1991).

The claimant here has met her burden. The consolidated findings of fact reflect that the claimant was forced to leave her job because she could not afford childcare for her newborn infant. The review examiner found that the claimant searched for affordable childcare but could not find any childcare options that did not exceed her net weekly earnings. The claimant testified that she is a single mother and did not have any family or friends who could have cared for her child while she worked for the employer. While the review examiner found that the employer had an Employee Assistance Plan ("EAP"), the employer testified that the EAP would have simply helped the claimant search for childcare, which she had already done, and the employer would not have provided affordable childcare to the claimant directly.[1] Under the circumstances, we agree with the review examiner's finding that the claimant was forced to leave her employment given her inability to secure affordable childcare. There is insufficient evidence in the record that additional attempts to preserve her employment would have been fruitful.

We, therefore, conclude as a matter of law that the claimant left work involuntarily for urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e)(1).

[1] The claimant's testimony regarding her family situation, and the employer's testimony regarding the EAP, 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 Dir. 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 April 7, 2013, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 9, 2014

Paul T. Fitzgerald, Esq.
Chairman

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.

AM/rh