

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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**BOARD OF REVIEW
DECISION**

In the matter of:

Appeal number: **BR-116265**

CLAIMANT APPELLANT:

EMPLOYING UNIT:

S.S. # XXX-XX-
Hearings Docket # :

EMP. #

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Mary Jeanne Tufano, a review examiner of the Division 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 June 4, 2010. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on July 27, 2010. 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 October 19, 2010. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant left her employment voluntarily without 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 denied the claimant's application for review. The claimant appealed to District Court, which remanded the case to the review examiner to allow the claimant to submit documentation to substantiate her testimony about her medical condition. Both parties attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the claimant's need to relocate to a warmer climate, in order to alleviate chronic pain associated with her osteoarthritis and prior hip replacement surgery, was an urgent, compelling, or necessitous reason for leaving employment.

Findings of Fact

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

1. The claimant was employed as a floor supervisor in protective services from approximately February 1997 or 1998 until June 4, 2010, when she quit work. The claimant worked full-time, on either a 9:00 A.M. to 5:00 P.M. or 3:00 P.M. to 11:00 P.M. shift, Monday through Friday.
2. The claimant quit work in order to move to North Carolina.
3. The claimant suffers from osteoarthritis and has experienced considerable pain due to her hip, and had hip replacement surgery in May and November 2008. During the course of her surgery and afterwards, the claimant discussed with her doctor the benefits of moving to a warmer climate such as North Carolina.
4. The claimant returned to full duty after her hip replacement surgeries.
5. The claimant's job duties in her protective services position required her to be on her feet and walking during her entire shift, which the claimant found difficult due to her physical condition. The claimant had conversations with her supervisor about the pain she was experiencing from her osteoarthritis and walking throughout her shift, and had been reprimanded by her supervisor for issues arising from the pain that she was experiencing.
6. The claimant decided to move to North Carolina for its warmer climate, and because she feared further injury due to ice and snow in Massachusetts, particularly after she broke her foot in January 2009.
7. The claimant also decided to move to North Carolina for economic reasons, due to the cost of living in Massachusetts as compared with her pay rate, but her primary reason was for the warmer climate.
8. The claimant gave her employer written notice that she was leaving work on or about May 11, 2010. The claimant did not tell her employer that she was moving for health related reasons and did not provide any medical documentation to her employer about her need to move for health related reasons.

9. The claimant experienced relief from the pain she suffered from her osteoarthritis after she moved to North Carolina.
10. The claimant's treating physician in North Carolina, who the claimant began seeing after she moved to North Carolina, provided the claimant with a letter in 2011, prior to the date of hearing, which stated that the claimant was under his care for osteoarthritis, an orthopedic condition leading to painful inflammation of the joints and a breakdown of cartilage in the joints. The physician's letter included the following statement:

Studies have shown that a warmer climate considerably eases the symptoms of osteoarthritis. A (sic) One Tufts Medical Center study reports that every 10 degree drop in temperature corresponds with an incremental increase in arthritis pain. Johns Hopkins Medical School has also concluded that those living in warmer, drier climates experience fewer episodes of arthritic pain. Having not to manage snow and ice would also make it easier for [the claimant] to get around as cold weather tends to make the joints feel stiffer. Finally, a warm weather climate would be less stressful for her overall, and stress itself has been shown to make this condition worse.

11. The claimant is seeking work at which she may sit as well as stand in performing her duties.

Ruling of the Board

The Board adopts the review examiner's consolidated findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

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. Commissioner of Dept. of Employment & Training, 412 Mass. 845, 848, 851 (1991).

The claimant here has met her burden. After the initial hearing the review examiner found that the claimant provided credible testimony that her doctor recommended that she relocate to a warmer climate in order to alleviate her chronic pain associated with her osteoarthritis and prior hip replacement surgery. The review examiner denied the claimant benefits, however, because the claimant provided no supporting medical documentation. At the remand hearing, the claimant submitted into evidence a letter from her treating physician which confirms that the claimant suffers from chronic pain related to her osteoarthritis, and that a warmer climate should help to reduce her pain.

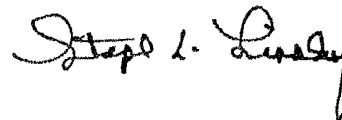
We, therefore, conclude as a matter of law that the claimant left work involuntarily for urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending July 10, 2010 and for subsequent weeks if otherwise eligible.



John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - June 16, 2011



Stephen M. Linsky, Esq.
Member

Member Sandor J. Zapolin did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

LAST DAY TO FILE AN APPEAL IN COURT- July 18, 2011