**The claimant, who was diagnosed with multiple mental health disorders including borderline schizophrenia and borderline personality disorder, had urgent, compelling, and necessitous reasons to leave his position with the employer after 18 years, because he believed that he would be fired and hospitalized due to the fact that his inability to complete newly assigned tasks resulted in employer warnings, which caused severe deterioration of his mental health and symptoms such as panic attacks and delusions.**

**Board of Review Paul T. Fitzgerald, Esq.
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Boston, MA 02114 Judith M. Neumann, Esq.
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**Issue ID: 1277577**

**Claimant ID: 0014 6325 82**

**BOARD OF REVIEW DECISION**

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Joseph Tyman, 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 his position with the employer on October 17, 2014. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 12, 2014. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended only by the claimant, the review examiner affirmed the agency’s initial determination and denied benefits in a decision rendered on March 13, 2015. 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 for the submission of additional medical evidence, and for additional testimony regarding the claimant’s medical diagnoses. Only the claimant 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 initial conclusion, that the claimant lacked urgent, compelling, and necessitous reasons for quitting, is supported by substantial evidence and free from error of law, where the claimant had a documented medical history and current diagnosis of significant mental illness that caused him to feel so incapable of performing his job that he became unable to continue to work.

Findings of Fact

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

1. The claimant began working for the employer, a franchisee of a chain hotel operation, in October of 1996.
2. At the time of his separation, the claimant was working part time as a housekeeping [aide] for between fifteen (15) and thirty-five (35) hours per week, though the exact amount would vary from week to week, at the employer’s [Town A], MA location (“Hotel”) at the pay rate of $12.25 per hour.
3. The claimant did not have any other work simultaneous to that which he was doing for the employer.
4. The claimant suffers from ongoing diagnosed conditions of borderline schizophrenia, borderline personality disorder, as well as panic and anxiety disorders, with symptoms including occasional delusion such as hearing voices, e.g. those of family members, who are not present.
5. The claimant also has great difficulty with changes to his daily routine, which causes him to become easily confused, stressed, and frustrated when such changes occur.
6. The claimant was hospitalized due to his psychological condition at a medical treatment facility in [Town B], MA (“Hospital”) on May 26, 1988, after which he was discharged on June 17, 1988.
7. The claimant then began seeing a licensed clinical counselor on a weekly basis, which he still does to this day, for assistance with his psychological issues and day to day activities.
8. The claimant began working for the employer in 1996 through the recommendation of the Massachusetts Rehabilitation Commission, who had deemed the claimant mentally handicapped and in need of assistance.
9. In May of 2012, the employer’s assistant general manager at the time, a male (“Manager”), left the company.
10. Prior to this, the claimant had [] already been having difficulty with completing all the tasks the Manager had put onto a new special custom checklist, as opposed to the standard housekeeping task list, for him due to feeling stressed and ill at ease with the altering of his duties from the standard list to this new list.
11. After the Manager left the employer’s company, two new assistant general managers came in and began overseeing the claimant, each of whom were both female.
12. The claimant’s psychological issues include a fear of, as well as difficulty in, communicating with and taking orders from women.
13. In the summer of 2014, the claimant went on a vacation from which he returned to find that his written list of assigned daily tasks had been changed to add additional tasks to his workload, after which he continued working and trying to complete the new set of assignments.
14. The list now included that the cleaning of the front lobby floors had to be done by 1 pm.
15. Upon first trying to finish the new list of tasks, the claimant began feeling panicked and fearful about having to do new tasks and finish them on time which caused him more stress.
16. The claimant began to feel confused during his shifts which disrupted his ability to finish tasks he had begun.
17. The claimant also began experiencing panic attacks while trying to finish his new checklist of assigned tasks, including suffering from dizziness, physical shaking as well as nausea and vomiting.
18. Such panic attacks began occurring multiple times per week from August 2014 through until after the claimant’s separation in October 2014.
19. The claimant again began hearing things that were not occurring in reality, such as thinking he was being paged to the front desk when it had not actually happened.
20. The claimant was unable to successfully complete all of the items on his new list of duties at any time after it was changed in September 2014.
21. The claimant told both the housekeeping supervisor and the assistant general manager directly supervising the claimant (“Supervisor”) that he could not complete all of the tasks now assigned to him and asked for some to be taken away, after which each of them said that he could in fact complete them all and encouraged him to keep working but did not lessen his workload.
22. The claimant believed he would be fired if he did not finish all of his tasks as he had received warnings in the past for not completing all of his duties, as well as other discipline in his file, which led him to believe he would not have any further chances to continue working.
23. At 1:20 pm on October 17, the Supervisor noticed that the floors had still not yet been completed.
24. Later that day, the Supervisor brought the claimant to her office and gave him a written warning (“Warning”).
25. The Warning stated that the claimant needed to finish all of the tasks on his list or, if he was not going to be able to finish something in a given day, to tell the Supervisor or other management that he would not be able to get to certain items.
26. The claimant then left behind his company property, left the grounds of the Hotel and did not inform anyone that he was leaving or would not be coming back.
27. The claimant was on the schedule to work on October 18, 19, and thereafter, but did not report to work or contact the employer again after that day.
28. The claimant did not speak to the Supervisor or the other assistant general manager due to feeling stressed and afraid of talking to them due to their gender, while he also feared that discussing his increased stress, panic attacks, and hearing things would cause him to be sent to the Hospital again.
29. The employer concluded that the claimant abandoned his job and subsequently formally separated him from his position.
30. As of January 5, 2015, the claimant was deemed to be suffering from a chronic mental condition that was not expected to improve and would persist for over a year into the future.

CREDIBILITY ASSESSMENT:

The claimant provided detailed additional testimony, as well as medical documentation, about his mental illness and the work conditions that led him to leave his position in October 2014. The claimant gave firsthand testimony that he was experiencing multiple severe panic attacks with dizziness, vomiting, and other symptoms as well as delusions as a result of the panic and anxiety resulting from the change in his duties in September 2014. The claimant testified that this led him to leave his job after receiving another warning from the Supervisor, as he felt unable to speak to her due to his mental illness which prevents him from communicating easily and effectively with women, as well as his belief that he would be fired and potentially be sent back to the Hospital. He added, however, that he had mentioned to multiple members of the employer’s staff prior to leaving that he could not complete the new additional tasks with no response from the employer, testimony that was not present at the first hearing. The claimant’s testimony was detailed and consistent throughout the remand hearing. It is therefore found to be credible by the Review Examiner.

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 original 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, in light of the review examiner’s consolidated findings after remand, we reject her initial legal conclusion that the claimant had voluntarily resigned from his employment without good cause attributable to the employer or urgent, compelling and necessitous reasons.

Since the claimant quit his job, this qualification for benefits is governed by G.L. c. 151A, § 25(e), which provides, in pertinent part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter . . . (e) For the period of unemployment next ensuing . . . after the individual has left work . . . if such individual established 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 the above provision, it is the claimant’s burden to establish that he left work for urgent, compelling and necessitous reasons. The review examiner initially concluded that the claimant had not met his burden. After remand, however, the review examiner supplemented the record with additional findings of fact that satisfy the Board that this claimant was suffering from severe panic attacks and delusions as a result of his anxiety about the employer’s change in his job duties, and that the claimant reasonably believed that his worsening mental condition would lead to discharge and further hospitalizations.

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 and Training, 412 Mass. 845, 848, 851 (1991). A wide variety of compelling personal circumstances have been recognized as constituting urgent, compelling, and necessitous reasons which may render a claimant’s departure from work involuntary. Dir.of Division of Unemployment Security v. Fingerman, 378 Mass. 461 (1979). The requisite assessment is whether the claimant reasonably believed that he left his job for compelling reasons. Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759 (2006). “Prominent among the factors that will often figure in the mix when the agency determines whether a claimant’s personal reasons for leaving a job are so compelling as to make the departure involuntary is whether the claimant had taken such ‘reasonable means to preserve [his] employment’ as would indicate the claimant’s ‘desire and willingness to continue [his employment].’” Id. at 766, *citing* Raytheon Co. v. Dir. of Division of Employment Security, 364 Mass. 593, 597-598 (1974).

In this case, the consolidated findings establish that, at an earlier point in his life, the claimant had been hospitalized for mental illness and that he was currently diagnosed with significant mental health illnesses: borderline schizophrenia, borderline personality disorder, and panic and anxiety disorders. His symptoms included delusions, such as hearing voices. It appears that the employer was aware of the claimant’s condition, since, as indicating in Finding of Fact # 8, the claimant was referred to the job by an agency that assists mentally disabled persons. When, after 18 years, the employer added additional tasks to the claimant’s written list of daily assigned tasks, his male supervisor of many years was replaced by females (with whom the claimant became especially anxious), and the claimant began to have difficulty completing the additional tasks, leading to warnings, reprimands, stress, anxiety, and escalation of other symptoms. For example, he began to hear voices. On October 17, 2014, after receiving a warning for failing to complete his work, the claimant concluded that he would not be able to improve his performance, and that he would be both discharged and hospitalized for his declining mental health. He left his job and did not return.

Following remand, the review examiner made a credibility assessment finding the claimant to be credible, that he provided detailed and consistent additional testimony and medical documentation, and that his symptoms, such as delusions and panic attacks resulting from his anxiety regarding the change in his job duties, led to a belief that he would be discharged and hospitalized if he tried to continue working. Such assessments are within the scope of the fact finder’s role; and, unless they are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996).

While an individual without the claimant’s illness may have been able to manage the situation without quitting, it is the very nature of the claimant’s illness that he could not negotiate the situation rationally or make a rational decision about quitting. This Board has previously held that, in determining whether to apply the urgent, compelling and necessitous standard, medical evidence of incapacity can be significant and probative, where, as here, it is potent. *See, e.g.,* Board of Review Decisions 0011 7414 02 (August 18, 2014), and 0002 4049 00 (August 19, 2014)[[1]](#footnote-1) and BR-110773 (Jan. 27, 2010). We are persuaded that that the claimant was, in fact, too ill to continue to work and that his illness was an urgent, compelling, and necessitous reason for quitting.

We have also previously held that where a claimant’s altered mental state significantly impairs the ability to make a rational decision about quitting the claimant not only may be found to have quit involuntarily for purposes of G.L. c. 151A, § 25(e), but would also not have been aware or rationally able to comply with any obligation to preserve his employment. *See* Board of Review Decisions 0011 0939 51 (February 24, 2015), and 0002 4280 21 (February 13, 2014).[[2]](#footnote-2) That said, the consolidated findings of fact indicate that the claimant made some efforts to preserve his employment. He told both the housekeeping supervisor and the assistant general manager that he could not complete all of the tasks now assigned to him, asked for some to be taken away, but was denied this request because the supervisors believed he could complete them. Indeed, it was a warning about failing to complete tasks that precipitated the claimant’s decision to leave on his last day of work. The claimant reasonably could have concluded that further attempts to lighten his work load would have been futile.

We, therefore, conclude as a matter of law that the claimant involuntarily left his employment for urgent, compelling, and necessitous reasons, pursuant to G.L. c. 151A, § 25(e).

The review examiner’s decision is reversed. The claimant is entitled to receive benefits for the week ending October 18, 2014, and for subsequent weeks if otherwise eligible.

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**BOSTON, MASSACHUSETTS** Paul T. Fitzgerald, Esq.

**DATE OF DECISION -** **January 7, 2015**  Chairman

 

Judith M. Neumann, Esq.

Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT COURT OR TO THE BOSTON MUNICIPAL 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.

To locate the nearest Massachusetts District Court, see:

[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

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.

SPE/rh

1. Board of Review Decision 0002 4049 00 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted. [↑](#footnote-ref-1)
2. These decisions are also unpublished but available upon request. [↑](#footnote-ref-2)