

Board of Review
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Issue ID: 0010 9677 48

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Elizabeth Trelegan, 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 July 26, 2013. She filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on September 5, 2013. 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 November 4, 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 afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party 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 relocation to Georgia to become the sole caregiver for her ailing father was not an urgent, compelling, or necessitous reason for leaving her employment, 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 began working for the employer on October 29, 2012.
2. The claimant worked full-time as a Customer Service Representative in the employer's finance department. The claimant worked 40 hours per week and earned \$14.50 per hour.

3. The claimant's father is 70 years old.
4. In November of 2012, the claimant's father suffered a mild heart attack.
5. In the beginning of July 2013, the claimant visited her father in Georgia. The claimant noticed her father had difficulty getting around his home and doing simple tasks.
6. The claimant's father lived by himself after his wife, mother and niece passed away. The claimant's father suffers from depression, high blood pressure and has swelling in his knees. He receives cortisone shots in his knee every three to six months and walks with a cane. He requires knee replacement surgery, but cannot have the surgery until his blood pressure is controlled.
7. The claimant observed her father having difficulty walking in his home and needing to hold onto furniture to get from one point to another.
8. On July 16, 2013, the claimant provided the Manager of Customer Service with verbal notice of her resignation, effective July 26, 2013. The claimant informed the Manager of Customer Service that the claimant was relocating to Georgia to take care of her father.
9. The claimant is the father's sole caregiver. The claimant has other family members, but they were not able to provide care for the father because they have their own families to care for.
10. On July 26, 2013, the claimant resigned from her employment to relocate to Georgia to provide care for her father.
11. The claimant did not request a transfer because the employer does not have employment opportunities in Georgia.
12. The claimant did not request a leave of absence because she was relocating permanently to Georgia.
13. The claimant currently resides in Georgia.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the 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 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 did not have urgent, compelling, or necessitous reasons for leaving her employment.

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). A wide variety of personal circumstances have been recognized as constituting urgent, compelling and necessitous reasons under this statutory provision. Norfolk County Retirement System v. Dir. of Department of Labor & Workforce Development, 66 Mass. App. Ct. 759, 765 (2009) (internal citations omitted).

The claimant here has met her burden of showing that she had urgent, compelling, and necessitous reasons for leaving her employment. The findings of fact reflect that the claimant's elderly father was ill, suffered from multiple health issues that impacted his mobility and ability to take care of himself, and had no one else to care for him. The review examiner found that the claimant relocated to Georgia, where her father resided, to become his sole caregiver. Given that the claimant's relocation was open-ended and there was no indication that her father's condition would improve within a reasonable timeframe, it would have been futile for her to have requested a leave of absence, and the findings of fact reflect that the employer had no other employment opportunities for the claimant in Georgia. We note that the Supreme Judicial Court has rejected the notion that a claimant must have requested a transfer or a leave of absence in order to be eligible for unemployment benefits; the claimant "simply must prove that [she] has made a reasonable attempt to correct the situation or that such an attempt would have been futile." Guarino v. Dir. of Division of Employment Security, 393 Mass. 89 (1984). Based on these circumstances, we conclude that the claimant acted reasonably in leaving her employment.

We, therefore, conclude as a matter of law that the claimant's reasons for separating from employment were of such an urgent, compelling, and necessitous nature so as to make her separation involuntary.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending August 31, 2013, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 15, 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.

AM/rh