

**Board of Review  
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**Issue ID: 0002 2245 10**

## **BOARD OF REVIEW DECISION**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by Stephen A. Dougal, 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 November 21, 2012. He filed a claim for unemployment benefits with the DUA, which was approved in a determination issued on April 1, 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 May 15, 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 afford the claimant an opportunity to testify. 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 left work voluntarily without good cause or urgent, compelling, and necessitous reasons by leaving work in order to help his family, because his former wife was battling cancer and she and the

claimant's daughter had longstanding interpersonal difficulties, 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 worked full-time for the employer, a furniture manufacturer, located in Fitchburg, Massachusetts, as a machine operator, from May 3, 2012 until November 21, 2012. The claimant was paid \$12.75 per hour.
2. On May 31, 2012 the claimant was hired on a temporary basis.
3. The claimant was referred to the employer by a rehabilitation program in Gardner, Massachusetts where the claimant was a resident.
4. The claimant was driven to work from Gardner, Massachusetts to the employer's place of business in Fitchburg, Massachusetts which was about 10 miles one way.
5. On September 3, 2012 the claimant was offered employment on a permanent basis.
6. The claimant intended to stay in the area.
7. The claimant accepted the permanent offer of employment.
8. The claimant worked on November 21, 2012.
9. The claimant called the Human Resources Manager after work on November 21, 2012 and told her he would not be returning to his job because he was returning to Blackstone, Massachusetts.
10. The claimant's ex-wife and daughter lived in Blackstone, Massachusetts. The claimant's ex-wife had been battling cancer for the past two years and the claimant's daughter and her mother had been having problems for the past two years.
11. The claimant had been in the rehabilitation program and felt it was time for him to go home to Blackstone, Massachusetts. The claimant moved to Blackstone, Massachusetts.
12. The claimant would not have transportation to commute from Blackstone, Massachusetts to Fitchburg, Massachusetts which was about 50 miles one way when he moved to Blackstone, Massachusetts.

13. The employer was pleased with the claimant's work performance.

14. The claimant's job was not in jeopardy.

15. Work was available for the claimant at the time of separation.

### Ruling of the Board

In accordance with our statutory obligation, we review the consolidated findings of fact made by the review examiner to determine: (1) whether these 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 believe these findings do not sustain the review examiner's conclusion that the claimant is disqualified from benefits, under G.L. c. 151A, § 25(e)(1).

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 . . . [T]he 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 . . . .

Also relevant in this appeal is G.L. c. 151A, § 25(e), which 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.

Under G.L. c. 151A, § 25(e), it is the claimant's burden to establish that his separation was for urgent, compelling, and necessitous reasons. The review examiner initially concluded, based solely upon the employer's testimony, that the claimant had not met his burden. We remanded the case to afford the claimant an opportunity to testify. After remand, we conclude that the claimant has met his burden.

The consolidated findings establish that the claimant left work located in Fitchburg, Massachusetts, to return home to Blackstone, Massachusetts. The record establishes that, while employed by the employer, the claimant had been in a six-month drug and alcohol rehabilitation program located in Gardner, Massachusetts, which had referred him to the employer and also provided transportation for the 10-mile trip to and from Fitchburg. The claimant's former wife and their daughter live in Blackstone, Massachusetts. His former wife had been battling cancer for the last two years; and, during that entire time, the claimant's daughter and her mother had been having interpersonal problems. The claimant provided unchallenged testimony that he returned home in order to help his family, and the review examiner found that the claimant felt

that it was time to return home to Blackstone. The review examiner found that the claimant had no transportation from Blackstone to Fitchburg, which was about fifty miles each way. The claimant called the human resources manager on November 21, 2012, and advised her that he was leaving his job to return home to Blackstone, Massachusetts.

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 examine the circumstances on a case by case basis to 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). We should not take "too narrow a view of the factors entering into the determination whether reasons are urgent, compelling and necessitous." Dir. of Division of Unemployment Security v. Fingerman, 378 Mass. 461, 464 (1979). "The pressure of necessity, of legal duty, or family obligations, or other overpowering circumstances and his [or her] capitulation to them transform what is ostensibly voluntary employment into involuntary employment." Raytheon Co. v. Dir. of the Division of Unemployment Security, 344 Mass. 369, 373 (1962).

These standards are met here. The claimant's former wife had been battling cancer for two years, apparently relying upon their daughter for assistance. The relationship between mother and daughter was fractious. The claimant reasonably construed these circumstances as requiring him to move back to Blackstone to provide adequate care for his former wife. Family obligations, such as the urgent need to care for a seriously ill family member, are well-recognized as compelling circumstances. Raytheon, supra. Upon returning to Blackstone, the claimant had no means of transportation to commute 50 miles to and from the job in Fitchburg. The claimant, therefore, acted reasonably in concluding that he had no choice but to leave his employment.

Accordingly, we conclude that the claimant involuntarily left his employment for urgent, compelling, and necessitous reasons, within the meaning of G.L. c. 151A, § 25(e).<sup>1</sup>

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending February 9, 2013, and for subsequent weeks if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 21, 2014**



Paul T. Fitzgerald, Esq.  
Chairman



Judith M. Neumann, Esq.  
Member

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<sup>1</sup> In the case of an involuntary quit, under G.L. c. 151A, § 25(e)(1), benefits shall not be charged to the employer's account, but shall be charged to the solvency account, pursuant to G.L. c. 151A, § 14(d).

**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.

SPE/rh