

**Board of Review**  
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**Issue ID: 0011 7414 02**  
**Claimant ID: 10168267**

## **BOARD OF REVIEW DECISION**

0011 7414 02 (Aug. 18, 2014) – The claimant failed to prove an urgent, compelling, and necessitous reason for leaving employment, where his medical evidence was a general history and failed to state that he could not do his job or that his condition was so debilitating the he could not communicate his condition to the employer or attempt to preserve his job at the time he left.

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by 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 affirm.

The claimant resigned from his position with the employer on October 15, 2013. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 16, 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 February 3, 2014.

Benefits were denied after the review examiner determined that the claimant had 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) and 25(e). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we initially denied review of the case. However, after reconsideration, the Board remanded the case to the review examiner to take additional evidence regarding the claimant's medical issues. 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 before the Board is whether the review examiner's decision to deny benefits is supported by substantial and credible evidence and free from error of law, where the review examiner found that the claimant resigned his job after being reprimanded by the principal of the employer's school, the claimant suffers from depression, the claimant never informed the employer of his health issues, and the claimant did not provide medical documentation to show that he was unable to perform his job or preserve his employment at the time of his separation.

### **Findings of Fact**

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

1. The claimant worked as a Middle school technology and engineering teacher for the employer, a municipality, from 9/30/13 until he separated from the employer on 10/15/13.
2. The claimant was hired to work full time, Monday through Friday, 7:30 AM to 2:30 PM earning an annual salary of \$70,000.
3. The claimant left work after he had been reprimanded by the Principal with regards to the safety of the students.
4. The claimant had been having problems with the behavior of some of the students in his class. He spoke to the Vice Principal about concerns he had regarding these students.
5. The Vice Principal tried addressing the claimant's concerns by making a presence in the claimant's classroom when he was teaching the students and issuing discipline as he saw necessary.
6. On 10/15/13, the Principal of the school made a visit to the claimant's classroom while the class was in session and witnessed a student injure himself with a glue gun during the class.
7. The Principal pulled the claimant aside and reprimanded him about student safety in the classroom.
8. The claimant resigned after this discussion with the Principal. He sent his immediate resignation via an email message to the Principal and Vice Principal on 10/15/13.
9. The claimant suffers from depression. He never made the employer aware of his mental health condition.
10. Prior to leaving the claimant did not seek assistance from the Union or the Superintendent. Nor did the claimant avail himself [of] the employer's employee assistant program or the teachers mentoring program.
11. The claimant had not received any other discipline from the employer. He left his position without any advance notice to the employer.
12. The claimant considered himself unable to perform his job at the time of his separation.
13. The claimant failed to provide any addition medical evidence to support his testimony that he was not able to perform his job at the time of his separation.

14. The claimant felt he lacked the mental resources to understand the need to communicate with the employer and the ability to carry such communication out because he was not in a good state of mind to make logical decisions at the time he separated from his employment. He had a lot of stress, anxiety and the job was overwhelming.
15. The claimant failed to provide any additional medical evidence to support his testimony that he lacked the mental resources to understand the need to communicate with the employer and the ability to carry such communication out.
16. The claimant testified that he failed to inform the employer of his medical condition and to explore accommodations prior to resigning because he felt his mental health was a private and personal matter that he did not have to share with the employer.
17. The claimant declined to provide medical documentation concerning his mental health from 2005 to 2013 because he believed it was illegible and he did not want the employer to have access to these records because he felt the information contained within is private and personal.

#### 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 that the claimant is not entitled to benefits is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's consolidated findings of fact. In adopting the findings, we deem them to be supported by substantial and credible evidence. Based on those findings, we agree with the review examiner's initial conclusion that the claimant is not eligible for benefits.

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 . . . .

G.L. c. 151A, § 25(e), 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 both of these statutory provisions, the claimant has the burden to show that he is entitled to benefits. The review examiner concluded that the claimant had not carried his burden, and we agree.

As an initial matter, the findings of fact do not support a conclusion that the claimant quit his job for good cause attributable to the employer. Indeed, the findings do not indicate that the claimant had a reasonable workplace complaint. The review examiner found that the claimant was having some problems with students in his class. The vice-principal of the school tried to help the claimant by addressing the problems when he was in the claimant's classroom. After a student was injured in the presence of the principal on October 15, 2013, the claimant was reprimanded. We do not see anything unreasonable about the employer's conduct here. It was trying to address the issues that the claimant was having in the classroom, and a reprimand about safety in the classroom appears to have been entirely understandable given what had occurred on October 15, 2013. A claimant who quits a job after a reasonable reprimand has not carried his burden to show that he quit for good cause. See Leone v. Dir. of Division of Employment Security, 397 Mass. 728, 731-732 (1986).

The more appropriate question to be addressed here, and the focus of our remand, is whether the claimant quit his job involuntarily for urgent, compelling, and necessitous reasons. "A 'wide variety of personal circumstances' have been recognized as constituting 'urgent, compelling and necessitous' reasons" under the above statutory provision. Norfolk County Retirement System v. Dir. of Department of Labor and Workforce Development, 66 Mass. App. Ct. 759, 765 (2009), quoting Reep v. Comm'r of Department of Employment and Training, 412 Mass. 845, 847 (1992). To evaluate whether the claimant's reasons for leaving work were urgent, compelling, and necessitous, we must examine the circumstances and evaluate "the strength and effect of the compulsive pressure of external and objective forces" on the claimant to ascertain whether the claimant left his job involuntarily. See Reep, 412 Mass. at 848.

The thrust of the claimant's argument to the review examiner and to the Board is that his medical conditions rendered him unable to do his job and incapable of attempting to preserve his job prior to quitting on October 15, 2013. The claimant offered three documents to support his case. The first, dated January 14, 2014, is a letter indicating that the claimant has been diagnosed with Bipolar II disorder. The letter, written by a registered nurse, indicates that the claimant first saw her in November, 2013, and presented with moderate depression. The nurse notes that the claimant has a history of depression and ADD and gives some symptoms associated with Bipolar II disorder. There is nothing in this document which states that the claimant could not do his job or preserve his job in October, 2013. The letter does not state that the claimant was incapable of working in late 2013. The letter is in the nature of a general history and informational letter regarding the claimant's diagnoses as of January 14, 2014.

The second letter, dated January 13, 2014, is also a general letter regarding the claimant's efforts to control his anxiety and depression. The main purpose of the letter appears to be to try to help the claimant obtain unemployment benefits, since such benefits are mentioned twice over the course of a short letter. Again, however, there is no indication in this letter that the claimant could not work or was unable to preserve his job in October, 2013.

Finally, the claimant submitted a letter, dated January 11, 2014, from a principal of a school at which the claimant had previously worked. The main content of the letter is about what happened to the claimant in 1998, roughly fifteen years prior to the events at issue in this case. Although the letter explains what happened regarding the claimant's prior resignation from a stressful situation, which is, arguably, also what happened in this case, the claimant's medical problems in 1998 are of tangential relevance to the events of this case, which occurred in 2013.

Although given the opportunity to present further evidence of his medical conditions at the remand hearing, the claimant chose not to submit anything else. The extent of the review examiner's specific findings as to the claimant's medical conditions is that the claimant suffers from depression. The claimant offered no contemporaneous medical documentation to show that he was so impaired by the depression (and associated anxiety and stress) that he could no longer do his job or attempt to preserve it. We cannot conclude that the medical documentation noted above is sufficient for the claimant to carry his burden to show that he left his job for urgent, compelling, and necessitous reasons. The fact that the claimant had a history of depression and was eventually diagnosed with Bipolar II disorder does not, in and of itself, mean that the claimant quit his job involuntarily.

This conclusion is not contrary to our decision in BR-110773 (January 27, 2010), which the claimant cited in his request that the Board reconsider its denial of his application for review. In that case, the claimant had submitted two notes, both from his doctor. The first note indicated that the doctor had treated the claimant for the previous four years, the claimant's condition had worsened, and it had been necessary for the claimant to leave his job. The second note indicated that the claimant was not able to function after he lost his job. The Board noted that "[t]he only probative evidence is [the claimant's doctor]'s assessment of somatic and auditory hallucinations, paranoid ideation, depression, and anxiety that rendered the claimant unable to function well enough to engage in efforts to preserve his job." In discussing whether the claimant had carried his burden in the case, we stated that the "analysis of the case begins and ends with [the] two letters." We suggested that the review examiner's adverse credibility assessment did not allow the examiner to ignore competent medical evidence about the claimant's ability to work or preserve his job.

The claimant asks us to begin and end our analysis of this case with the three letters relative to his medical condition he has offered into evidence and conclude that they support his contention that he resigned his job involuntarily. We decline to do so, primarily because the content of the medical documentation in this case is substantially different from the medical documentation that was present in BR-110773. As opposed to the doctor's note in BR-110773, no doctor in this case has indicated that the claimant needed to quit his job as a result of his medical conditions. None of the letters here indicates that the claimant was unable to function. The symptoms at play in BR-110773 are also of a magnitude greater than those presented here. The review examiner found that the claimant felt that he could no longer do his job because of stress and anxiety. Even if we take into account the "moderate depression" noted by the registered nurse in the January 14, 2014, letter, this does not come close to the combination of "somatic and auditory hallucinations, paranoid ideation, depression, and anxiety" noted by the Board in BR-110773.

Moreover, a focus exclusively on the medical documentation is not necessarily the best way to evaluate cases applying the urgent, compelling, and necessitous standard. In deciding such cases, objective medical documentation is significant and probative (as was the case in BR-110773), but not necessarily determinative. The Massachusetts appellate courts have held that, in applying the urgent, compelling, and necessitous standard, it is important to note all of the circumstances confronting a claimant. The Appeals Court in Norfolk County Retirement System, 66 Mass. App. Ct. at 765, discussed this standard as follows:

In determining, pursuant to G. L. c. 151A, § 25(e), whether a claimant's personal reasons for leaving a job are so compelling as to make the departure involuntary, the inquiry proceeds on a case-by-case basis. "The nature of the circumstances in each individual case, the strength and the effect of the compulsive pressure of external and objective forces must be evaluated, and if they are sufficiently potent, they become relevant and controlling factors." Reep v. Commissioner of the Dept. of Employment & Training, [412 Mass 845,] 848, . . . quoting from Raytheon Co. v. Director of the Div. of Employment Security, 344 Mass. 369, 373-374 . . . (1962), quoting from Sturdevant Unemployment Compensation Case, 158 Pa. Super. 548, 557-558, . . . (1946). There should not be "too narrow a view [taken] of the factors entering into the determination whether reasons are 'urgent, compelling and necessitous' within the meaning of the statute." Director of the Div. of Employment Security v. Fingerman, 378 Mass. at 464. . . . Benefits are not to be denied to those "who can prove they acted reasonably, based on pressing circumstances, in leaving employment." Reep v. Commissioner of the Dept. of Employment & Training, supra at 851, . . .

This language indicates that no one factor, such as medical documentation alone, automatically controls the urgent, compelling, and necessitous analysis. If the medical documentation is "sufficiently potent," as was the case in BR-110773, then the case could well turn on that documentation. However, as is the case here, where the medical documentation is not as compelling, it is not a controlling factor.

Here, the documents submitted by the claimant, all dated several months after his resignation, do not compel any conclusion that he quit his job involuntarily. Moreover, they do not indicate that the claimant's medical condition was so debilitating that he could not preserve his job. *See Norfolk County Retirement System*, 66 Mass. App. Ct. at 766 (noting the significant importance of preservation efforts when analyzing facts under the urgent, compelling, and necessitous standard). Nor does it establish that the claimant could not inform the employer that he was having medical issues, a communication that might have preserved his employment.

We, therefore, conclude as a matter of law that the review examiner's original decision to deny benefits is based on substantial and credible evidence and free from error of law, because the claimant did not carry his burden to show that he left his job involuntarily for urgent, compelling, and necessitous reasons.

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending October 13, 2013, and for subsequent weeks, until such time as he has had eight weeks of work and in each of those weeks has earned an amount equivalent to or in excess of his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - August 18, 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.

SF/rh