

The Commonwealth of Massachusetts

SUFFOLK, SS.

BOSTON MUNICIPAL COURT DEPARTMENT
OF THE TRIAL COURT FOR CIVIL BUSINESS
CENTRAL DIVISION.

CIVIL ACTION No. 2009 01 CV 004076

To: ANNE M. PEREZ
7750 N.W. 13th STREET
PEMBROKE PINES, FL 33024

ANNE M. PEREZ

Plaintiff(s)

DIVISION OF UNEMPLOYMENT ASSUSANCE
PEABODY MANAGEMENT SYSTEMS INC.

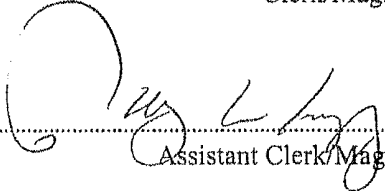
Defendant(s)

JUDGMENT ENTERED AFTER FINDING (FOR CLERK'S USE ONLY)

After approval by the court on proposed order submitted by both parties,
(Forde,J), Judgment is hereby entered for the plaintiff
Anne Marie Perez, Court reverses DUA's decision and awards plaintiff the
unemployment benefits to which she is entitled.
Notice sent to all parties.

Dated at Boston, Massachusetts, this 06/14/2011.

DANIEL J. HOGAN
Clerk/Magistrate

By  Assistant Clerk/Magistrate

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

BOSTON MUNICIPAL COURT
CIVIL ACTION NO. 0901-CV-4076

_____)
ANNE MARIE PEREZ,)
)
Plaintiff,)
)
v.)
)
JUDITH CICATIELLO, in her capacity)
as DIRECTOR of the DIVISION of)
UNEMPLOYMENT ASSISTANCE)
)
Defendant.)
_____)

PROPOSED ORDER

Plaintiff Anne Marie Perez ("Perez") respectfully submits this Proposed Order, assented to by the Defendant Department of Unemployment Assistance (DUA), in her request for judicial review of the final decision of the Department of Unemployment Assistance ("DUA"), denying her unemployment insurance ("UI") on the basis of a finding that she did not leave her employment for good cause under Mass. Gen. Laws c. 151A, § 25(e)(1).

Plaintiff seeks a reversal of the decision as based on error of law. As set out more fully in plaintiff's Memorandum in Support of Amended Complaint for Judicial Review, the decision should be reversed because the employer's smoking policy at the nursing home where plaintiff was employed as a nurse's aid subjected her to unwanted second-hand smoke (SHS). This exposure to SHS constituted non-disqualifying good cause for her leaving attributable to the employer. This legal conclusion is supported by Massachusetts law that requires that an

6/13/11 Approved. A. Forder, J.

employer must provide a smoke free environment for all employees working in enclosed workspace. G.L. c. 270, § 22(b)(1). Here, the plaintiff had to cover "smoking duty" in a courtyard surrounded by walls on all sides. Consequently, this violated requirements that smoking may be permitted in an open place only if it provides thorough unobstructed circulation and no more than two walls. 105 CMR §§ 661.200 and 661.200(B).


Moreover, even though the Review Examiner found that SHS was not the real reason for Perez' leaving, substantial and credible evidence in the record demonstrated that SHS was a motivating factor in Perez' decision that she leave her job and that she took numerous steps to try and preserve her job by asking for an accommodation that was repeatedly refused.

Finally, the Review Examiner's refusal to credit SHS as a health threat without medical proof is erroneous as a matter of law in light of the uncontroverted and widely known scientific evidence to the contrary.

Accordingly, plaintiff respectfully proposes that the Court reverse DUA's decision below and award Perez the unemployment benefits to which she is entitled.

Respectfully submitted,


Anne Marie Perez
By her attorney



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Assented to:

Department of Unemployment Assistance
By its attorney



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Dated: June 13, 2011

