COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW
Government Center
19 Staniford Street
Boston, MA 02114

Tel. 626-6400
Office Hours:
8:45 a.m. to 5:00 p.m.

DECISION OF BOARD OF REVIEW

In the matter of: Appeal number: BR-72295

EMPLOYEE APPELLANT:
[redacted]
[redacted] MA [redacted]
S.S. [redacted]
Office #37

EMPLOYING UNIT:
John Hancock Mutual Life Insurance
c/o Jon-Jay Associates, Inc.
P. O. Box 779
Lynnfield, MA 01940

On June 3, 1997, in Boston, Massachusetts, the Board reviewed the written record and the recordings of the testimony presented at hearings held by the Deputy Director's representative on January 21, April 4 and May 7, 1997.

On March 14, 1997, the Board allowed the claimant's application for review of the Deputy Director's decision in accordance with the provisions of Section 41 of M.G.L.c. 151A, the Massachusetts Employment and Training Law. The Board remanded the case to the Deputy Director to take further testimony and to make consolidated findings of fact. The Deputy Director returned the case to the Board on May 30, 1997.

The Board has reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The claimant's appeal is from a decision of the Deputy Director which found that:

> From the evidence presented it was established that the claimant left her job because her child's school schedule which begins at 8:20 AM conflict [sic] with the start time of her regular shift and inters [sic] with the claimant's responsibility of getting her child to school in the morning.
>
> In accordance with Section 25 (e) (1), the burden of proof is upon the claimant to establish by substantial and credible evidence that she left for good cause attributable to the employer or its agent or for [sic] urgent compelling and necessitation reason.
>
> According to the facts in evidence the claimant failed to meet her burden of proof that her leaving of work was either for good cause attributable to the employer or for [sic] urgent compelling and necessitous reason.
>
> The circumstances of the claimant's leaving are not urgent, compelling and necessitous. Her child's school schedule begins at 8:20 AM and her work schedule also starts at 8:20 AM. The claimant's personal need to get her

child to school cause [sic] conflict with her work schedule. Approximately three month [sic] before her child begin [sic] school the claimant knew of the conflict but she waited until September 1996 to resolve the conflict by making a request for a modified work schedule [sic] the claimant sought relief for her conflict only from her employer. She did not consider any other appropriate school which night [sic] provide a schedule which did not conflict [sic] her work schedule though given relief by her employer was a two month trial of a modified work schedule [sic] the claimant did not take any action to make any arrangement for a conflict during the trial period. When given a two week notice that the modified work schedule could not continue because it conflict [sic] with the needs of the department the claimant was encouraged to seek remedy or a transfer to another department and/or via the employer's child care referral service. The claimant rejected seeking remedy via the child care referral service because of her presumption that such service would fail to provide any remedy and she paid little or no interest in seeking a transfer to another department because the human resource representation [sic] had informed her that flex work schedule [sic] or [sic] not guaranteed but are granted at the discretion of department managers depending on department needs.

In view of the facts, the claimant is subject to disqualification and is denied benefits.

The claimant is denied benefits from the week ending November 30, 1996 and until she has had eight weeks of work and in each week earned an amount that is equal to or in excess of her weekly benefit amount.

M.G.L.c. 151A, s. 25(e) is pertinent and provides in part, as follows:

Section 25. No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for -

> (e) For the period of unemployment next ensuing and until the individual has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of the individual's weekly benefit amount 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 . . .
>
> 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.

The Deputy Director's representative held a hearing on January 21, 1997. Both parties appeared. The Deputy Director's representative held remand hearings on April 4, and May 7, 1997. Again, both parties appeared. Whereupon, the Deputy Director's representative made the final consolidated findings of fact as follows:

[redacted] the claimant, worked for John Hancock Mutual Life, the employer, from March 1995 until November 22, 1996 when she left her job.

The claimant worked for the employer as a full time employee in the employer's Corporate Travel Services Department.

The claimant had worked from 8:20 AM until 4:30 PM until September 3, 1996 when she was temporarily granted a schedule of 8:50 AM to 5:00 PM.

The claimant had one child who began attending a parochial school in September 1996.

The claimant knew in the spring of 1996 that her child's school schedule would come in conflict with her own work schedule in September. The child's school day began at 8:20 AM. To resolve the conflict of her child's school schedule with her work schedule, the claimant requested a modified work schedule in September.

The claimant's manager was reluctant to grant the claimant the operating modified work schedule she requested because the department hours are 8:20 AM to 4:30 PM. The department is open during those hours to provide travel service to the company. The department telephone system operates only during the set operating hours of the department.

The manager informed the claimant in September 1996 that the modified work schedule she requested would be granted.

During the two month period of the modified schedule the claimant's manager determined that the claimant's duties in the department could not generally be performed after 4:30 PM when the telephone system closed for the day.

On November 4, 1996 the claimant's manager notified the claimant that he was giving the claimant a two week notice that the modified work schedule she had been granted for a two month trial would end.

The claimant informed her manager on November 4, 1996 that she would quit her job because she would not be able to meet her regular work schedule of 8:20 AM To 4:30 PM because that schedule would interfere with her bringing her child to school before going to work.

Although the claimant knew in the spring of 1996 that the school hours for the child would conflict with her work schedule, she did not consider seeking to enroll her child in a school which would have a class schedule which would not be in conflict with her work schedule.

When the claimant notified her manager that she intended to leave her job because she could no longer enjoy a modified delayed starting time for her work day, she was referred to the employer's Human Resource Department for possible transfer to another position in the company for possible resolution to her circumstance and she was referred to the employer's child care referral service.

The claimant did not access the employer's child care referral service because she presumed that the employer's child care referral service would be unable to provide her with [sic] solution to her circumstance of getting her child to school at 8:20 AM.

The claimant did not obtain child care for her child because the one child care provider she knew of would not be able to accompany her child to school in the morning because she would have to leave other children in her care to do so and she was unwilling to do so.

After giving notice of resignation of two weeks the claimant left her job on November 22, 1996 because the starting time of her shift 8:20 AM interfered with her ability to bring her child to school in the morning.

The claimant's son began school on September 3, 1996. The school is approximately a half mile from the claimant's home and approximately nine miles from the claimant's work place. The claimant traveled to work by train. It took her approximately a ½ hour to travel from the school to work. The claimant's son attends kindergarten. The school does not offer the class at another time starting later in the day. The claimant chose to enroll her child at his [sic] particular school for the academic and social needs of the child and did not seek to enroll him in another school because the chosen school met the needs stated above. The claimant did not consider a conflict with work to exist because she obtained a flexible work schedule. The claimant's spouse was unable to bring the child to school because his work schedule of 7:00am to 3:30pm prevented him from doing so. The claimant did not rely on a neighbor at times to accompany her child to school. The claimant did not have the availability of anyone other than her self who was able to accompany her child to school on a regular basis.

The claimant first brought the schedule conflict to her employer's attention in the beginning of August 1996 when she requested flex time from her manager. She was provided with a later stating time to suit her circumstances.

Prior to September, 1996, the claimant made other efforts to try to resolve her schedule conflict which were looking for other jobs outside of the company, sending a resume and filing employment applications. The dates of such efforts are uncertain. The results were negative.

The manager agreed to grant the claimant a modified work schedule to accommodate her need to bring her child to school on September 3, 1996. He did not specify that the modified work schedule was granted for a trial period of two months or for any other set period of time. Prior to November 4, 1996 the claimant was not aware of the ending of a flex time trial period.

The claimant met with and spoke to a representative of human resources on November 5, 1996. The human resource representative and the claimant discussed the possibility of obtaining a transfer to another position within the company as an option to resolve her conflict. The human resource representative advised the claimant to check the employer's newsletter entitled JobLine as a source for open positions within the company.

The claimant did not request a transfer or apply for another position with the employer because she didn't find any open position advertised in the publication, JobLine, for which she was qualified. She does not recall how many or what positions were advertised. Available positions were advertised in the "JobLine". It is unknown whether all available positions were advertised in "JobLine." The claimant did not believe she was qualified to apply for any other position with the employer because her work experience is in the field of travel and she was working at the employer's only travel office. In addition, the claimant has no knowledge of insurance which is the employer's business and she lacks a degree. The claimant went to travel school and she worked in the travel industry for ten years. In addition to attending the Travel School of America for three months the claimant attended Bentley College for one year and Boston College for one semester. The claimant worked for the employer as a corporate travel agent making airline, car, hotel and train reservations for employees and issuing tickets to those employees. The claimant believed she could be qualified for clerical positions if she had training on word processing. She found no such positions advertised in JobLine nor was she made aware of the opportunity to apply for such position after the manager informed her on November 4, 1996 that she would have to revert back to reporting to work at 8:30am [sic].

The claimant did not believe that the employer's child care referral service would be able [sic] provide her with a solution because she didn't recognized [sic] that she had a child care problem. She considered her problem to be a transportation issue rather than a child care problem. The claimant had used the employer's child care referral service in August 1995 to obtain child care for her son. At that time she interviewed four day care providers from a list of about twelve provided to her by the employer's referral service. The claimant found that none of the providers she interviewed would be able to solve her transportation issue of 1996. She interviewed these providers in August 1995. She is unaware of any new day care providers listed at the employer's day care referral service since the last time she used that service in August 1995.

The claimant was unaware of any other options available to her that would have allowed her to continue her employment and have ensured her son was able to get to school timely. She hadn't developed any such options.

On November 8, 1996, the claimant provided the employer with written notice of her resignation to be effective on November 22, 1996. The claimant didn't allow more time to try to resolve the schedule conflict before submitting her resignation because she considered any further efforts to be futile.

After reviewing the record, the Board adopts the findings of fact made by the Deputy Director as being supported by substantial evidence. The Board concludes, however, that the Deputy Director's decision is based on an error of law and modifies that decision for the following reasons.

In order to avoid disqualification for benefits under Section 25 (e) (1) of the Law, cited above, the burden of proof rests with the claimant to establish her leaving of work was voluntary with good cause attributable to the employer or its agent or involuntarily for an urgent, compelling and necessitous reason.

Here, the claimant had a child of kindergarten age, whose school starting time of 8:20 a.m., conflicted with her work starting time of 8:20 a.m. The claimant, in August of 1996, requested a modification of her work schedule in order to bring the child to school as she had no other means of getting the child to school at that time.

The manager granted the claimant a modified work schedule, without reservations, of 8:50 a.m. to 5:00 p.m. This was satisfactory to the claimant but, without warning, the manager informed the claimant, on November 4, 1966, that she would have to return to her former schedule of 8:20 am to 4:30 pm in two weeks. The claimant indicated she would have to leave but prior to submitting her two week notice of leaving she attempted to obtain a transfer within the company but she could find no other suitable work for her listed in the employer's newsletter, which was the only suggestion made to her by the employer's Human Resources Department. Therefore, she gave notice and she left her job on November 22, 1996.

The Board concludes that the claimant left her work because her hours of employment were changed which resulted in her inability to meet her child's school reporting requirements. Since the claimant attempted to preserve her employment by seeking a transfer, without success, her leaving is considered to be for an urgent, compelling and necessitous reason thus making her leaving involuntary. Consequently she is not subject to the disqualifying provisions of Section 25(e)(1) of the Law, quoted above.

M.G.L. c. 151A, s. 14(d)(3) is also pertinent and reads in part as follows:

> 14(d) The Commissioner shall determine the charges and credits to each employer's account as follows:
>
> (3) . . . Benefits which, in accordance with the provisions of this paragraph, would be charged to an employer's account shall not be so charged but shall be charged to the solvency account in any case where no disqualification is imposed under the provisions of clause (1) of subsection (e) of section twenty-five because the individuals leaving of work with such employer, although without good cause attributable to the employer, was not voluntary . . .

The Board modifies the decision of the Deputy Director. The claimant is entitled to benefits for the week ending November 30, 1996, and subsequent weeks, if otherwise eligible.

Mark T. Haldane

BOSTON, MASSACHUSETTS
DATE OF MAILING - JUN 13 1997

Mark T. Haldane
Chairman

Thomas E. Gorman

Thomas E. Gorman
Member

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

LAST DAY - JUL 14 1997

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THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

ALLOWANCE OF APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE DEPUTY DIRECTOR

BR-72295

EMPLOYEE APPELLANT:
[redacted]
[redacted] Street
Roslindale, MA 02131-2221
S.S. #[redacted]
Office #37

EMPLOYING UNIT:
John Hancock Mutual Life Insurance
c/o Jon-Jay Associates Inc.
P.O. Box 779
Lynnfield, MA 01940

The application of the **claimant** for review by the Board of the decision of the Deputy Director dated **January 29, 1997** is hereby allowed and the case remanded for one of the following reasons:

[x] To the Deputy Director for taking additional evidence. Parties will be notified by the agency of the date, time and place of the hearing.

[ ] To the Deputy Director for a new hearing and a new decision, with new appeal rights. Parties will be notified by that agency of the date, time and place of hearing.

[ ] To the Deputy Director solely for the issuance of a corrected decision with new appeal rights.

The Board of Review will make every reasonable effort to decide this case within the next 45 days.

If you are an unemployed claimant and not currently receiving unemployment benefits, and you do not receive a decision within the next 50 days, you may call us at 617-626-6400 if you are facing a financial hardship.

Mark T. Haldane

DATE: March 14 1997

Mark T. Haldane
Chairman

Attachment
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THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

TO: Hearings Department DATE: March 14, 1997

FROM: Board of Review

SUBJECT: Remand for Additional Evidence
Board of Review Docket Number: BR-72295

Please schedule a hearing for taking additional evidence as requested by the Board of Review. The additional evidence considered necessary pertains to:

A). The claimant should submit documentation from her son's school as proof of her son's schedule in September, 1996.

B).

1). a). On what date did the claimant's son begin school in September?

b). Where is the school located with respect to the claimant's home and the employer?

c). How long did it take the claimant to travel to work from the school?

d). Does the claimant's son attend kindergarten? Did the school offer the same class at another time starting later in the day? If yes, why didn't the claimant enroll her son in the later class?

e). Why didn't the claimant seek to enroll her child in another school with a class schedule that would not conflict with work?

f). Could the claimant's husband bring their son to school? If not, why not?

g). Review finding of fact #16 for accuracy and clarify:
Had the claimant relied on a neighbor at times to accompany her child to school? Was anyone, other than the claimant, able and available to accompany the claimant's child to school on a regular basis?

2). a). On what date did the claimant first bring the schedule conflict to the employer's attention? To whose attention did she bring the matter? What was the result of that discussion.

b). Prior to September 1996, what other efforts did the claimant make to try to address or resolve the schedule conflict? When, specifically, did the claimant make those efforts? What were the results of those efforts?

c). Please review findings of facts #7 & #9 for accuracy and clarify:
On what date did the manager agree to grant the claimant the modified work schedule to accommodate the claimant's need to bring her son to school? At that time, did the employer inform the claimant that the trial period of the modified work schedule was being granted only for 2 months or any other specified time period?

d.) Prior to November 4, 1996, was the claimant aware of when the trial period would end?

3). Pertaining to findings of facts #12, #13, and #14:

a). Did the claimant meet with or speak to a representative of Human Resources on November 5, 1996? What options for resolving the conflict did the claimant discuss with the representative? Did the Human Resource representative give the claimant any advice with respect to obtaining a transfer to another position? If yes, what advice was given by the Human Resource representative?

b). Did the claimant request a transfer or apply for another position with the employer? If not, why not?

c). Did the employer post all available positions on a "Job-line"?

d). Did the claimant believe she was qualified to apply for any other position with the employer? If the claimant did not believe she was qualified for any other position, what was the basis for her belief? What is the claimant's work experience and educational background? What was the claimant's position with, and what functions did she perform for, the employer? What is the nature of the employer's business?

e). For what other positions with the employer, if any, did the claimant qualify? Were those positions, for which the claimant qualified, posted on the Job-line, or was the claimant made aware of the opportunity to apply for them after the manager informed the claimant on November 4 that she would have to revert back to reporting to work at 8:20 AM?.

f). Why did the claimant believe that the employer's child care referral service would be unable to provide her with a solution? Does this service provide any referrals to resolve transportation issues such as the one the claimant had? Had the claimant previously utilized this service? If yes, when and for what purpose?

4). Did the claimant have any other options available to her that would have allowed her to continue her employment and have ensured her son was able to get to school, timely?

5). On November 8, 1996, did the claimant provide the employer with written notice of her resignation to be effective November 22, 1996? Why didn't the claimant allow more time to try to resolve the schedule conflict before submitting her written resignation notice?

C). Please allow the parties to present additional testimony and evidence if it is pertinent to the issue; afford the parties full rights of cross examination and rebuttal; review all findings of fact for accuracy; and issue consolidated findings of fact.

Please return this file and consolidated findings to the Board of Review following the hearing.

Mark T. Haldane

Mark T. Haldane
Chairman

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Form 0553 Rev. 2/95

THE COMMONWEALTH OF MASSACHUSETTS
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e). For what other positions with the employer, if any, did the claimant qualify? Were those positions, for which the claimant qualified, posted on the Job-line, or was the claimant made aware of the opportunity to apply for them after the manager informed the claimant on November 4 that she would have to revert back to reporting to work at 8:20 AM?.

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