



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:

APPELLANT: (claimant)

RESPONDENT: (employer)

Office #36

On June 3, 1999, the Boston Municipal Court, Division of the District Court Department, remanded this case, Civil Action #9801 CV – 258265 to the Board of Review. On August 9, 1999, in Boston, Massachusetts, the Board reviewed the written record, the transcript and the recordings of the testimony and evidence presented at the hearings held on August 10, 1998, and July 28, 1999.

On September 21, 1998, the application of the claimant for review by the Board of Review of the Deputy Director's decision was denied in accordance with the provisions of section 41 of M.G.L. c. 151A, the Massachusetts Employment and Training Law (the Law). The claimant exercised her right of appeal to the courts under M.G.L. c. 151A, section 42. The case was then remanded by the Boston Municipal Court for the taking of additional evidence.

The case was remanded by the Board to the Deputy Director in accordance with the court order and the case was returned to the Board of Review on July 30, 1999.

The Board has now 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 Deputy Director's decision, dated August 10, 1998, concluded that:

The employer did not discharge the claimant. Therefore, Section 25(e)(2) of the Law does not apply to this case.

Given the facts as stated above, it is concluded that the claimant's leaving of work was voluntary and without good cause attributable to the employing unit or its agent.

The claimant quit her job because she was dissatisfied with the employer's bus shuttle and being warned for tardiness.

The claimant received a warning for repeatedly reporting to work late. She was dissatisfied with the warning because her tardiness was caused by the employer's shuttle not picking her up at scheduled times. Therefore, it is found that the claimant's dissatisfaction was reasonable.

The claimant was required to take the shuttle bus because the distance from the parking lot to the job site was too far for her to work [sic] due to her medical condition.

Because the shuttle bus was so unreliable, the claimant believed she would continue to be disciplined for reporting to work late, despite the fact that the tardiness was not her fault. Based on this, the claimant chose to resign her position.

Although the claimant's dissatisfaction was reasonable, her leaving of work cannot be found to have been for good cause attributable to the employing unit since the claimant did not take sufficient steps to preserve her employment.

The claimant could have requested a transfer to a different job site that did not require her to park so far from work. She failed to do this and could not cite a reason for such a failure. Therefore, it cannot be found that the claimant had good cause for failing to obtain such a transfer and preserve her job.

Additionally, the employer had offered the claimant an opportunity to work in the parking lot and thereby, not have to take the shuttle bus to the client's building. Although she was physically capable of working in the parking lot and her duties would not have been adversely affected by her medical condition, the claimant's failure to accept this transfer, and thereby preserve her employment, was not for good cause.

Therefore, in view of the facts, the claimant failed to establish that her leaving of work was for good cause attributable to the employing unit or its agent within the meaning of Section 25(e)(1) of the Law. Consequently, benefits are denied.

The claimant is disqualified from receipt of benefits under Section 25(e)(1) of the Law for the week ending June 20, 1998, and until she has been employed for at least 8 weeks, and in each week earned an amount equal to, or in excess of her weekly benefit amount.

Section 25(e) of Chapter 151A of the General Laws 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 August 10, 1998. Both parties appeared. The Deputy Director's representative held a remand hearing on July 28, 1999, in accordance with the Court's Remand Order. The claimant appeared with counsel. The employer was represented along with an agent. Thereafter, the Deputy Director's representative submitted his final consolidated findings of fact as follows:

1. The claimant was employed as a full-time security guard from October 6, 1996, until May 19, 1998, when she quit her job.
2. The employer provides client companies with security services.
3. The claimant suffers from Lupus, a disease that affects her ability to stand or walk for prolonged periods of time.
4. The claimant's job required her to sit at a desk during her entire shift. She was responsible for checking identification cards of persons when they entered the client's building.
5. Until shortly before her leaving of work, the claimant had been allowed to park her personal vehicle on the street in close proximity to the client's building.

Shortly before the claimant left her work, the employer notified her that she would have to park approximately 1½ miles away from the client's building in a large parking lot owned by the client. All other employees were also required to park in this lot due to construction around the client's building.

6. The client company provided employees with transportation to and from the parking lot with a shuttle bus. Although the shuttle bus was scheduled to pick up employees at the parking lot every 15 minutes, the bus was frequently late and on occasion, did not arrive for long periods of time. Because of the late arrival of the shuttle bus, the claimant was frequently late when arriving at the client's building.

Other employees walked from the parking lot to the building when the bus was late. The claimant was unable to do so because of her medical condition.

7. Because the claimant was frequently late reporting to work after she was required to park in the client's parking lot, the employer issued the claimant a written warning for her tardiness. The warning stated that continued tardiness could result in discharge.

The claimant explained that the unreliability of the shuttle bus was the cause of her repeated tardiness. She then asked the employer if they would ask the client company if their security personnel could drive her from the parking lot to the building in the mornings when they picked up their own security personnel. Because the client's security personnel were timely in picking up their co-workers, the claimant believed her tardiness problems would be solved if she was given permission to ride with them in the morning. The employer declined the claimant's request to ride with the client's security personnel.

8. Because the bus was unreliable and she could not walk from the parking lot to the client's building, the claimant believed she would continue to report to work late and would be discharged for her tardiness. Rather than face this, the claimant chose to quit her job on May 19, 1998.
9. Before quitting her job, the claimant made no attempt to request a transfer to another job site because she was unaware of any other job site that had positions that did not require extensive walking or standing.
10. Before the change in parking arrangements was made, the claimant's supervisor offered her an opportunity to work in the parking lot rather than the employer's building. This position would have been indoors, and the building was fully heated and air-conditioned. This position would not have required the claimant to stand or walk and she would have been able to park her personal vehicle within feet of the workstation. The claimant declined this offer because the attendant's shack, in which she would have worked, had large windows on all sides of the building and would expose her to sunlight, which her physician explained could exacerbate her condition. The claimant told her supervisor that she could not accept that transfer due to the sunlight exposure and its effects on her medical condition.

11. Because the shuttle bus continued to arrive late in the parking lot, the claimant resigned her position on May 19, 1999 to avoid being discharged in the future for continued tardiness.

After reviewing the record, the Board adopts the consolidated findings of fact made by the Deputy Director's representative as being supported by substantial evidence. The Board concludes as follows:

The claimant left her employment after the employer warned her that her continued tardiness in reporting to work was jeopardizing her employment. The claimant, however, has established that mitigating factors hindered her ability to report to work timely. She reasonably believed her dismissal was imminent if her tardiness continued.

The claimant, who suffers from lupus, can neither stand nor walk for extended periods of time. The claimant, who had worked as a security guard since 1996, sat at a desk at a client's building. She would check identification cards of individuals entering the client's building.

Until shortly before leaving work, the claimant had been allowed to park her car in close proximity to the client's building. As a result of ongoing construction near the client's facility, the claimant as well as other workers of the client were required to park in a lot about one and a half miles from the client's building. Although the client provided a shuttle bus to transport the workers, the bus was unreliable resulting in the claimant frequently arriving late to work.

Although other employees were able to walk the distance from the parking lot to the place of employment, the claimant was unable to do so because of her medical condition. In an effort to be punctual, the claimant did request that she be granted permission to ride with the client's security personnel when they were picked up timely each morning by other client security employees. The employer, however, rejected this accommodation.

The employer did offer the claimant the opportunity to work in an attendant's shack located in the client's parking lot which would have allowed the claimant to park her car nearby. The claimant, however, had to reject this offer as the sunlight which would filter through the windows on all sides of the shack would exacerbate her lupus condition.

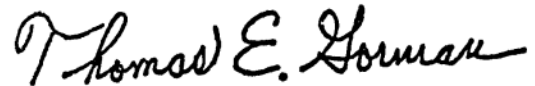
The Board concludes that the claimant did make a good faith effort to maintain her employment. Accordingly, her leaving of work was involuntary as it resulted from an urgent, compelling and necessitous reason within the meaning of section 25(e)(1) of the law.

Section 14(d)(3) of Chapter 151A of the General Laws is also pertinent and provides, in part, as follows:

Section 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 Deputy Director's decision. The claimant is entitled to benefits for the week ending June 20, 1998, and subsequent weeks, if otherwise eligible.



Thomas E. Gorman
Member

BOSTON, MASSACHUSETTS
DATE OF MAILING - **AUG 25 1999**



Kevin P. Foley
Member

APPELLANT I.D. [REDACTED]
RESPONDENT I.D. # [REDACTED]

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

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LAST DAY - **SEP 24 1999**