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-25443200**

APPELLANT: (claimant)

[redacted]
Cambridge, MA 02139

RESPONDENT: (employer)

Massachusetts Financial Services
c/o Jon-Jay Associates Inc.
P.O. Box 779
Lynnfield, MA 01940

Office #27

On January 20, 2000, in Boston, the Boston Municipal Court, Division of the District Court Department, remanded this case, Civil Action No. 9955-CV-0068, to the Board of Review. On March 2, 2000, in Boston, Massachusetts, the Board reviewed the written record, the transcripts and the recording of the testimony and evidence presented at the hearing held on February 11, 1999.

On March 19, 1999, the application of the claimant for review by the Board of Review of the decision of the Deputy Director was denied by the Board in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The claimant exercised her right of appeal to the court under Section 42 of the same law. The case was then remanded by the Boston Municipal Court to make subsidiary findings from the record on the following issues: (1) Whether the claimant's direct supervisor had notice of the claimant's difficulties in meeting her childcare responsibilities and attending early and late scheduled meetings at work; (2) What if any action did the direct supervisor take in response; (3) What actions the claimant believed her direct supervisor would take on an on-going basis with regard to her circumstances at work; and (4) Whether the claimant could have afforded to take an unpaid leave of absence.

The case was remanded by the Board to the Deputy Director on January 31, 2000 in accordance with the court order. The case was returned to the Board of Review on February 24, 2000.

The claimant's appeal is from the Deputy Director's decision which concluded that:

> The claimant was not discharged from her job. Therefore, Section 25(e)(2) does not apply to this case.
>
> 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 her job with good cause attributable to the employer or for urgent, compelling and necessitous reasons. Based on the record, it is concluded that the claimant has failed to meet her burden of proof.

This examiner heard and considered the claimant's testimony about the circumstances of her leaving work. Although the claimant had a valid personal reason (i.e., the transportation of her son) for leaving her job, she did not, as required under the Law, to collect unemployment benefits when one leaves her job, attempt to preserve her employment. It is recognized that during her first week of employment the claimant talked to the "Y" about having her son attend the after-school program there. It is also recognized that the claimant requested a transfer to the Correspondence Department, which transfer was denied. However, the claimant did not make other attempts to preserve her employment. She did not request time off or a leave of absence from work to attempt to rectify the situation with her son's transportation. Most significantly, however, the claimant did not inform the employer about any difficulties she was having with the childcare for her son. In fact, during the claimant's employment, the Recruiter was unaware that the claimant had a child. By not informing the employer about the situation with her son, she did not give the employer an opportunity to rectify the situation.

Based on the Law, this examiner has no alternative but to find that the claimant failed to meet her burden of proof in this matter. She is subject to disqualification from the receipt of benefits.

The claimant is denied benefits from the week ending January 2, 1999 and until she has had eight weeks of work and in each week has earned an amount that is equal to or in excess of her weekly benefit rate.

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 February 11, 1999. Both parties appeared. The Board remanded the case to the Deputy Director for further review in accordance with the court order and to make additional findings of fact. The Deputy Director's representative then made the following consolidated findings of fact:

1. The claimant worked for the employer as a full-time qualified plan service representative from November 23, 1998 until December 18, 1998, when she left her job.

2. The claimant is a single parent and has a son. When she was employed by the employer, the claimant's son was eight years old.

3. The Manager, Jamie Serra, was the claimant's direct supervisor.

4. The Manager had asked the claimant if she had children. The claimant responded yes.

5. When the claimant began working for the employer, her son caught an 8:20 AM bus to school. The claimant arranged for her son to participate in an after-school program where she had to pick him up by 5:30 PM.

6. About a year and a half before the claimant's son was enrolled in the above-referenced after school program, he was enrolled at an after school program at the "Y" where the pick up time was 6:00 PM.

7. When the claimant was hired for her position, she was told that the hours would be from 9 AM to 5 PM. Working these hours would have allowed the claimant to drop off and pick up her son.

8. When the claimant began training for her position, she learned that the Manager of the Department where she worked expected the representatives to complete the phone call they were on, even if the call lasted five or ten minutes beyond 5 PM. Customer service calls frequently lasted until 5:10 or 5:15 PM. The claimant was willing to accept some limited flexibility in her hours, such as staying an extra five minutes.

9. The claimant explained to the Manager that she had to drop her son off at 8 AM.

10. The claimant was not able to pick up her son on time at day care if she left work at 5:15 PM.

11. During the first week of the claimant's employment, she called the "Y" where her son had previously attended an after school program to attempt to have him attend there because of the later pick up time. The "Y" informed the claimant that there was no space available at the time.

12. During her employment, the claimant often arrived past the 5:30 PM pick up time for her son at the after school program. The personnel at the program repeatedly told the claimant that she needed to pick up her son on time.

13. After the claimant began working for the employer, she learned from the Manager that she would need to stay until 6 PM when staff meetings were scheduled. The claimant told the Manager that she could not do this. The Manager told the claimant that there was definitely going to be a problem when she explained that she could not stay until 6 PM.

14. During the week ending December 4, the claimant's Manager informed her that she needed to pick a time to sign up for training, and that she needed to do this before work (at 8 AM) or after work (at 6 PM). The claimant told the Manger that she could not commit to working at these times.

15. The claimant believed, based on her conversation with the Manager, that the employer would, on an ongoing basis and whenever it decided to, schedule mandatory training either before work at 8 AM or after work until 6 PM.

16. The claimant believed based on her conversation with the Manager, that the employer would, on an ongoing basis, hold mandatory staff meetings after work until 6 PM.

17. On or about December 4, the claimant went to the Recruiter in Human Resources who had hired her for her job. The claimant told the Recruiter that she was not sure the position was for her. The claimant told the Recruiter that the job seemed very competitive, that it was high stress, that employees did not seem happy, that the salary did not compensate for the hours, and that the hours were a problem. The claimant did not inform the Recruiter that she was having difficulty with her son's pick-up from day care. When the claimant worked for the employer, the Recruiter did not know that the claimant had a son.

18. The claimant was aware that employees in the Correspondence Department worked a strict schedule form [sic] 9 AM top 5 PM. The claimant gave her resume to that Department and inquired with the Recruiter about transferring to that Department.

19. On December 7, the claimant expressed to the Recruiter that she had an interest in working in the Correspondence Department, and wanted to go ahead and post for the position.

20. The employer had a policy whereby employees could not post for another position in the company until they had been at their present position for one year, unless the Department head of the Department where the employee was working gave approval.

21. The Recruiter told the claimant that she would need to talk to someone about the approval.

22. On or about December 8, the Recruiter told the claimant that a transfer would not be possible, because within the previous three or four months, the Department Head had denied someone else's request for a transfer and the employer needed to be consistent in its approach.

23. On December 18, when the claimant went to pick up her son, she was late. The personnel at the program insisted that the claimant refrain from arriving to pick up her son after 5:30 PM.

24. The claimant did not report for work after December 18, having decided that she needed to pick up her son on time.

25. The claimant contacted the Recruiter by voice mail two times on December 22 and left voice mail messages for her that she wanted to talk about her employment status.

26. The Recruiter told the Human Resources Manager about the claimant's December 22 calls to her. On December 22, the Manager called the claimant and left a message for her.

21. On December 23, the claimant called the Manager. The Manager told the claimant that if she did not show up for her job, that she would be considered to have abandoned her job. The claimant told the Manager that she would be resigning from her job. When she told the Manager that she would be resigning, the claimant did not inform the Manager that the reason for her leaving was related to her son or any difficulty with day care arrangements for him.

27. As a single parent, the claimant could not have afforded to take an unpaid leave of absence from work.

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

Under Massachusetts General Laws, Chapter 151A, §25(e)(1), the burden of proof is upon the claimant to establish by substantial and credible evidence that her leaving of work was for good cause attributable to the employing unit or its agent or for an urgent, compelling and necessitous reason as to make her leaving involuntary.

The claimant left her job because she found that the hours required were interfering with picking up her 8-year old son from childcare on a timely basis. The claimant is a single parent with an 8-year old son. The claimant was hired to work the hours of 9:00 a.m. to 5:00 p.m. The claimant was required to pick up her son at an after-school program no later than 5:30 p.m. After the claimant

began training for the position, she learned that she would be expected to frequently work 10 to 15 minutes beyond 5:00 p.m. in order to complete customer service calls. This late departure often prevented the claimant from picking up her son on time and she was repeatedly told by the after-school program personnel to adhere to this 5:30 p.m. time. The claimant looked into another after-school program but there were no openings. The claimant was also told by the employer that she would have to select a time for mandatory training, which would either be one hour before her 9:00 a.m. starting time or one hour after her 5:00 p.m. departure time. The claimant apprised her manager that she could not make such a commitment to these hours. As a result of these conflicts with the hours and picking up her son, the claimant met with the employer's recruiter who had hired her and requested a transfer to another position. The claimant was told a transfer would not be possible at that time until she was in the position for one year.

The catalyst that precipitated the claimant's leaving occurred on December 18, 1998, when the claimant was again late reporting to her son's after-school program. Again the personnel in this after-school program insisted that the claimant would have to stop reporting late. At that point the claimant decided that she would not return to work.

The Board concludes that the claimant made a reasonable effort to transfer to another position in which she could leave work to pick up her son on time but she was told that this would not be possible for one year. A leave of absence in this case would not have been feasible for the claimant because she could not afford to be without any income as a single parent. Therefore, the Board further concludes that the claimant had an urgent, compelling and necessitous reason to leave her job and her separation was involuntary and not subject to disqualification under the provisions of Section 25(e)(1) of the Law, cited above.

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 decision of the Deputy Director is modified. The claimant is entitled to benefits for the week ending January 2, 1999, and subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF MAILING - MAR 27 2000

Francis J. Holloway
Chairman

Thomas E. Gorman
Member

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 - APR 26 2000