



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

Tel. (617) 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- 85323**

**CLAIMANT APPELLANT:**

[REDACTED]

S.S. # 034-56-2307  
 Office # 23

**EMPLOYING UNIT:**

[REDACTED]

ER #72-130010

On September 9, 2002, in Boston, Massachusetts, the Board reviewed the written record and a recording of the testimony presented at a hearing held by the Deputy Director's representative on June 3, 2002.

On June 18, 2002, the Board allowed the claimant's application for review of the Deputy Director's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). Both parties were invited to present written argument stating their reasons for agreeing or disagreeing with the Deputy Director's decision. Only the claimant responded within the time period allowed.

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 the Deputy Director's decision which concluded:

The claimant was not discharged from her employment. Therefore, Section 25(e)(2) does not apply in 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 for good cause attributable to the employer or its agent, or for urgent, compelling or [sic] necessitous reasons.

The claimant did not meet her burden in this case. The claimant left her job because she could not emotionally cope with an accusation made against her more than two months earlier. Given her fragile state of mind and the fact that she has subsequently been under psychiatric treatment, her reason for leaving may be concluded to have been for an urgent, compelling and necessitous reason. However, in light of her supervisor having called her back to work after she had left her job in November, she failed to take reasonable steps to preserve her employment. A leave of absence would have been an option and her supervisor had encouraged her to return in the past. Furthermore, in light of the fact that she had called in sick for five days after she last worked, her stated reasons for her failure to take steps to preserve her employment are not credible.

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

The determination is affirmed in effect and modified as to the section of the Law.

The claimant is ineligible for benefits for the week ending March 16, 2002, and until she has worked eight weeks and in each week has 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 June 3, 2002. Both parties appeared. Whereupon, the Deputy Director's representative made his findings of fact as follows:

1. The claimant was employed as an assistant teacher from March 1, 2001, through February 8, 2002, when she left her job. Her normally scheduled hours of work were from 7:00 a.m. to 3:00 p.m. on Monday through Friday.
2. The employer's attendance policy requires employees, who are able [sic] to report for work, to call the on-duty person at home by 6:00 a.m. and to leave a message on their home phone and their cell phone if unable to reach that person. The policy further provides that three consecutive no call no shows will result in automatic termination of employment.
3. Aware that consecutive no call no shows would lead to termination, although unaware of the number, the claimant, along with other staff members, was given a memo on the sick and vacation procedures on January 16, 2002.
4. The claimant worked in a program that supplied daycare for young single mothers in order to allow them to remain in school. State law requires a certain ratio of teachers to children, and the employer, to insure compliance with the law, instituted this policy to protect its license.
5. In November, 2001, the claimant was accused by one of the student mothers of trying to smother her child. The claimant, who was bothered by the accusation, was told by her supervisor that if she couldn't deal with these types of accusations, she should probably think about leaving her job.
6. The claimant thereafter, continuing to be bothered by the accusation, left her job. Her supervisor later called her and convinced her to return to work.
7. Emotionally unstable, the claimant continued to be bothered by the accusation, which had no basis. Having last worked on Friday, February 1, 2001, the claimant, although not following proper call-in procedures because she "lost the home telephone numbers of the on-duty persons", telephoned the school on each of the following five days, leaving messages that she would be out sick.

8. Deciding to leave her job, the claimant, who subsequently sought psychiatric treatment, did not call or report for work on February 11, February 12, or on February 13, 2002. Unable to reach the claimant, the senior child care director sent the claimant a letter dated February 13, 2002, notifying her of her termination for three consecutive no call no shows.
9. The claimant never requested a leave of absence, which would have been available to her, or spoke to a supervisor before deciding to leave her job.

After reviewing the record, the Board adopts the findings of fact made by the Deputy Director's 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 she left for good cause attributable to the employer or its agent, or for urgent, compelling and necessitous reasons. In the instant case the claimant has met that burden of proof.

The claimant left her job because she could not emotionally cope with an accusation made against her by a mother in the program. The mother accused the claimant of attempting to smother her child, which the claimant did not do. This accusation bothered the claimant to the point that she felt that she could no longer continue working in that environment. The claimant had initially left the job in November 2001, but was convinced to return by her supervisor.

Despite her return to work, the situation did not change and management, although aware of her concerns, advised her that if "she couldn't deal with these types of accusations, that she should probably think about leaving her job". The claimant continued to try to do the work but it still bothered her. She finally decided to sever the employer-employee relationship based on her belief that it would be in her best interest. Her belief was reasonable considering her state of mind at the time and in light of the high level of child care responsibility that the employer expected her to follow. In addition, although the claimant had the option to request a leave of absence, it was not viable or logical. Even after leaving the job she found it necessary to seek psychiatric treatment for her problem.

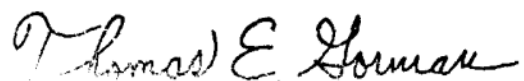
Therefore, the claimant's leaving was involuntary for an urgent, compelling and necessitous reason and it follows that she is not subject to the disqualifying provisions of section 25(e) of the law, quoted above.

The Board modifies the Deputy Director's decision. The claimant is entitled to benefits for the week ending March 16, 2002, and subsequent weeks, if otherwise eligible.



Francis J. Holloway  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - SEP 11 2002**



Thomas E. Gorman  
Member

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