



COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF UNEMPLOYMENT ASSISTANCE  
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- 91637**

**CLAIMANT APPELLANT:**

**EMPLOYING UNIT:**

Boston Medical Center Corporation  
c/o Unemployment Services Corp.  
P.O. Box 346  
Wakefield, MA 01880

Office #22

EMP. #72-024950

On April 27, 2004, in Boston, Massachusetts, the Board reviewed the written record and a recording of the testimony presented at the hearing held by the Deputy Director's representative on November 25, 2003.

On January 21, 2004, 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. Neither party responded within the time allowed.

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

The appeal of the claimant is from a decision of the Deputy Director which concluded:

The claimant was not discharged from her employment. Therefore, Section 25(e)(2) of the Law does not apply in this case.

In accordance with Section 25(e)(1) of the Law, the burden is upon the claimant to establish by substantial and credible evidence that she left work for good cause attributable to the employer or its agent, or for urgent, compelling and necessitous reasons. There is no evidence that the claimant left work for urgent, compelling and necessitous reasons. Therefore, the remaining question is whether the claimant left work for good cause attributable to the employer.

In this case, the claimant did not meet the burden required by Law.

The claimant established that she left work because of the way that her co-workers and supervisors treated her, and because she thought she was going to be fired. The evidence established that at least one of the claimant's co-workers was unfriendly toward the claimant, and that the claimant received criticism from the director of the center. Although the evidence established a lack of congeniality in the workplace, the claimant's testimony regarding her perceptions of unfriendliness and the specific incidents of criticism is insufficient to establish either harassment or unreasonable criticism that interferes with the performance of claimant's work. The evidence established that the claimant's supervisor responded favorably to the claimant when the claimant initially complained to her

supervisor about a co-worker's unfriendly attitude, and that the claimant did not discuss further complaints with the supervisor after that date. In addition, although the evidence established that the director spoke harshly to the claimant in front of her co-workers on the date the claimant left, there is insufficient evidence to establish that the claimant took any steps to resolve the conflict prior to walking off the job. Although the conflict was with the director of the center, the claimant did not respond to her in any way, nor did she wait until the claimant's supervisor returned to work for assistance or support in resolving the conflict. There is insufficient evidence in the record to establish that the claimant's further attempts to resolve the conflicts she was experiencing would be futile.

Furthermore, there is insufficient evidence in the record to establish that the claimant's belief that she would be fired was reasonable. The evidence established that the claimant's three month probationary period was extended until the end of September, due to the claimant's working only one third of her scheduled time for three months. There is no evidence that the extension was unreasonable, in light of the amount of time that the claimant would be away from work to attend grand jury duty. In addition, although the claimant testified that the director told her at some point that she would not make it past her probationary period if the decision had to be made at that time, the claimant could not recall when the conversation took place, and there is no evidence that the claimant's discharge was imminent, particularly where her probationary employment period ran until the end of September. Therefore, there is insufficient evidence to establish that the claimant's belief that she would be fired was reasonable.

Under these circumstances, the claimant's leaving was voluntary and without good cause attributable to the employer.

Accordingly, the claimant is subject to disqualification and is denied benefits.

The claimant is not entitled to receive benefits for the week ending August 23, 2003 until she has had eight (8) weeks of work and in each week has earned an amount that is equal to or in excess of her weekly benefit amount 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.

**Section 25(e)(1) of Chapter 151A of the General Laws** is pertinent and provides 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. . . .

The Deputy Director's representative held a hearing on November 25, 2003. The claimant was present. The employer did not appear. The Deputy Director's representative then issued the following findings of fact:

1. The claimant was employed as a patient access representative at a medical center from May 28, 2003 until August 15, 2003, when she quit work. The claimant worked part-time, Tuesday, Thursday and Friday, from 9:00 A. M. to 5:30 P. M.

2. The claimant quit work because she did not like the way that she was being treated by her co-workers and supervisors and thought she was going to be fired.
3. Shortly after she was hired, the claimant felt that one of her co-workers was being unfriendly towards her and was spreading rumors that the claimant was unfriendly. The claimant spoke to the supervisor, and the supervisor told the claimant that she was glad that the claimant had come to her with the problem, and that the supervisor would talk to the co-worker. The following day, the claimant noticed a change in attitude on the part of the supervisor, and believed that the supervisor became unfriendlier toward the claimant. The claimant did not make any further complaints to the supervisor.
4. The claimant had been hired to replace an employee who had left work. Sometime after the claimant started work, the employee who had left returned to a temporary position. The claimant felt that her co-workers liked the temporary employee better than her, and wanted the claimant to leave so the temporary employee could have her job back.
5. As part of her training, the claimant needed to ask questions of her supervisor and co-workers. A co-worker told the claimant that the supervisor said that the claimant asked too many questions, which made the claimant feel uncomfortable every time she asked the supervisor a question. Co-workers also informed the claimant several times that the supervisor had been looking for the claimant, while the claimant had left her desk to go to the ladies room.
6. The claimant believed that she was being singled out for criticism, because she was told that her purse was too big, and the director told her that she should not keep her purse in a certain location. When the claimant told the director that other employees kept their purses in the same place, the director told the claimant that she would speak to the other employees as well.
7. Sometime in June 2003, the claimant received a notice that she had grand jury duty beginning July 7, 2003. The claimant informed her supervisor of the grand jury duty approximately two weeks prior to the start of jury duty. At some point prior to the start of her jury duty, the director approached the claimant and asked why she had not informed them earlier that she had grand jury duty. The claimant told the director that she had informed her supervisor of the jury duty two weeks earlier, after which the supervisor spoke to the claimant as if she had not received the notice.
8. The claimant got selected for grand jury duty, which required her to be out of work two out of her three scheduled workdays per week, beginning July 7, 2003, for three months. The director told the claimant that her three-month probationary period from the start of her employment would be extended by an additional month, and, if they had to make a decision on her employment at that point, the claimant would not make it. The claimant did not recall when this conversation took place, but understood that her probationary period would run until the end of September 2003.
9. On August 15, 2003, the claimant approached the secretary to the director of the medical center to inquire whether, when she left work early that day, her earned time would cover the two hours that she was going to be out. The secretary in turn asked the director, who responded that it would not be covered. The claimant asked the director why it had been covered under similar circumstances previously. The director responded to the claimant, in a loud voice that several co-workers were able to hear, that the claimant should not have been paid previously, and did she want to open that can of worms. The claimant was embarrassed at the way the director spoke to her in front of

her co-workers, decided to quit work, and left. The claimant's supervisor was not at work that day. The claimant did not speak to anyone before leaving, nor did she inform anyone that she was quitting. The claimant did not return to work thereafter.

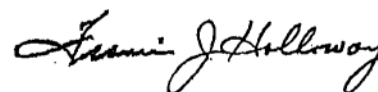
After reviewing the record, the Board adopts the findings of fact made by the Deputy Director's representative as being supported by substantial evidence. The Board concludes as follows:

The claimant left her employment on August 15, 2003, because of unfair treatment by the director and other employees, and a belief that she was going to be fired.

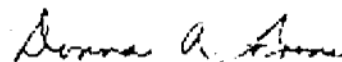
The findings of fact reflect that the director needlessly "singled out" the claimant for criticism on both job performance and personal issues. The director made it clear to the claimant, when extending her probationary period, that the employer was dissatisfied with the claimant and that her job was in jeopardy. In addition, having been told that the supervisor said the claimant asked too many questions, the claimant was uncomfortable asking the questions as needed in training. The claimant had previously tried to resolve an issue with a co-worker by going to her supervisor. The result was a change in attitude by the supervisor, who became less friendly towards the claimant. Thus, on August 15, when the director responded in an unduly harsh manner to a legitimate question, the claimant felt an impasse had been reached in developing a cohesive work relationship with management and co-workers. Consequently, the claimant's belief that she was going to be fired was reasonable. Under such circumstances, the claimant's leaving of work was for good cause attributable to the employer, and the claimant is not subject to the disqualifying provisions of Section 25(e)(1) of the Law cited above.

The Board modifies the Deputy Director's decision. The claimant is entitled to benefits for the week ending August 23, 2003, and subsequent weeks, if otherwise eligible.

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - May 21, 2004**



Francis J. Holloway  
Chairman



Donna A. Freni  
Member

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

**LAST DAY - June 21, 2004**

mh