



COMMONWEALTH OF MASSACHUSETTS
DIVISION OF UNEMPLOYMENT ASSISTANCE
BOARD OF REVIEW
Government Center
19 Staniford Street
Boston, MA 02114

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Office Hours:
8:45 a.m. to 5:00 p.m.

DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number: **BR-93594**

CLAIMANT APPELLANT:

EMPLOYING UNIT:

Office #41

On August 2, 2004, in Boston, Massachusetts, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Commissioner's representative on April 9, 2004, and April 21, 2004.

On June 10, 2004 the Board allowed the claimant's application for review of the Commissioner'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 Commissioner's decision. The employer responded within the time allowed.

The Board has reviewed the entire case to determine whether the decision of the Commissioner 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 Commissioner which concluded:

The claimant was not discharged from her employment, but quit 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 on 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.

In this case, the claimant did not meet her burden as required under the law.

The claimant left work due to an alleged hostile work environment and due to unreasonable criticism. The claimant testified that she suffered from anxiety and had developed a rash due to the work environment. The claimant also testified that she is an alcoholic, but stated that her alcoholism did not cause her to leave her employment. Although the claimant testified to the affect [sic] the job had on her mental health, it cannot be concluded that she was prohibited from working due to her health. Furthermore, the claimant failed to take steps to preserve her employment. The claimant did not request a leave of absence. The claimant also did not address her mental health issues with the employer. Therefore, it cannot be concluded that the claimant's leaving was for good cause attributable to the employer or its agent. Next the question becomes whether the claimant's leaving was for urgent, compelling and necessitous reasons.

The claimant left her job because she became dissatisfied with the criticism from the employer and the hostile work environment. It is concluded that the claimant failed to establish by substantial and credible evidence that the employer unreasonably criticized the claimant and/or created an unreasonably hostile work environment. At the hearing when asked about specifics of when the employer allegedly criticized her in front of clients, the claimant referenced two incidents that occurred several months prior to her leaving, involving the call from a woman inquiring about the secretary's job and the incident concerning mapquest. Neither incident amount to good cause attributable to the employer.

In regards to the criticism, the claimant admittedly made errors at work, and failed to establish that the employer acted unreasonably when addressing those errors. The employer did call the claimant at home, after the claimant had called her at home. It is concluded that both parties became upset during that telephone conversation, initiated by the claimant leaving work early. During the final incident, the claimant failed to establish that the employer acted unreasonably. The claimant had misplaced a document and misaddressed an envelope. The employer did reprimand the claimant but not in an offensive or unreasonable manner, that would justify a permanent separation from one's employment. Therefore, it cannot be concluded that the claimant's leaving was for good cause attributable to the employer or its agent.

Accordingly, the claimant is subject to disqualification and is eligible for the receipt of benefits.

The claimant is disqualified from receipt of benefits for the week ending December 20, 2003 until she has had eight (8) weeks of work and in each week has earned an amount equal to or in excess of his 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 Commissioner's representative held hearings on April 9, 2004, and April 21, 2004. Both parties were present. The Commissioner's representative then issued the following findings of fact:

1. The claimant worked full-time as a legal secretary for a solo practitioner (criminal defense attorney) from June of 2003 until December 12, 2003, when she quit.
2. The claimant quit her job due to an alleged hostile work environment and unreasonable criticism from the employer.

3. The claimant had no prior experience working as a legal secretary. The claimant made certain mistakes, such as typos, and sending client correspondence to the wrong correctional facility, and expected constructive criticism but disliked the manner in which the employer delivered the criticism.
4. In August of 2003, the claimant told the employer that she was intending to quit because she was dissatisfied with the job and unhappy with her pay. The claimant decided not to quit.
5. In August /September of 2003, the claimant received a call from a woman who was inquiring about the legal secretary's job. The woman stated that a particular client of the employer had referred her. This particular client had met with the employer earlier that day. The claimant believed that the employer must have been criticizing her in front of this client for him to refer another woman to call for the legal secretary job. The employer did not criticize the claimant in front of this particular client. The client had noticed several errors and/or typos in correspondence he had received from the employer. The client told the employer that she needed a more professional secretary, but did not tell the employer that he was having a friend call and inquire about a legal secretary job.
6. On another time during the late summer, the employer was in a meeting with a client's girlfriend. The client was incarcerated and the employer asked the claimant to get the directions to the jail from Mapquest.com. The claimant was having difficulty accessing the mapquest.com website. The client's girlfriend was standing in the office and stated that she was good with computers. The employer allowed the girlfriend to use the claimant's computer to access the website and get the directions herself. The claimant was upset and embarrassed when the girlfriend was allowed to use her computer and stated to the employer "don't you ever do that to me again."
7. On Friday, December 5, 2003, the employer was in court all day. The employer called the claimant and told her that she had to make certain corrections and additions to a document, which she would be receiving at the office via fax from another attorney. The employer also had left other projects for the claimant to complete. Throughout the day, the employer called into the office and the claimant stated that she had nothing to do and asked to leave early. The employer told the claimant to finish working on the assigned projects; one of which was categorizing the office expenses for tax purposes. The claimant did not finish the projects prior to leaving that evening.

Later that day, the claimant left work at 4 P.M. because it was snowing out. The employer had not returned to the office from court. The claimant's schedule was 8:30 A.M. to 5 P.M.

The employer was unhappy with the productivity of the claimant on this day.

8. On Friday evening and on Saturday, December 6, 2003, the claimant called the employer at her home and left a message to return the call. The employer later returned the claimant's call at approximately 10-10:30 P.M., after she listened to her messages. The employer asked the claimant to work the next day to make up for Friday, because she left work early. The claimant responded that she would work, but that she wanted to be paid and that it was not to make up for the past Friday.

The employer explained that she was unhappy with the claimant's work product. The employer explained that her 12-year old son had completed one of the projects that had been assigned to the claimant for Friday afternoon, which she did not complete. The employer then told the claimant that she did not believe things were working out. The employer made certain statements that she was losing money due to the claimant's inefficiency. Both parties became upset and raised their voices. The claimant complained about her pay and stated that the employer was unfair. The employer stated that she did not know what was going on and whether or not that the claimant wanted to work for her.

The employer knew the claimant's boyfriend because he would routinely call into the office and/or visit the claimant at the office. The claimant's boyfriend got on the telephone, and the employer spoke with him for several minutes, explaining that the claimant was costing her money and very defensive at work [sic].

9. On Sunday, December 6, 2003, the claimant called the employer and the office was closed due to snow.
 10. During the following week, the claimant felt a lot of tension in the office between herself and the employer. The two rarely spoke during the workday. The claimant noticed that the employer would roll her eyes when the claimant asked her a question. The claimant also asked the employer several questions, while the employer was on the telephone. The employer would say "hold on a minute, my secretary is interrupting me again."
 11. On Friday, December 12, 2003, the claimant had misplaced a 26-page document that the employer needed. The claimant told the employer that she could not find the document but was printing it out again. The employer explained that there was no ink in the printer and she attempted to shut the printer off, causing an error in the printer. The claimant was stressed out over the situation and nervous about the employer's behavior.
 12. Later that morning, a letter that was addressed to a client in jail, was returned to the office because the claimant misaddressed it. The claimant had mailed several letters to this particular jail throughout her employment. The employer placed the letter on the claimant's desk and asked "why are we still sending theses [sic] letters to the wrong address." The claimant believed that the employer was treating her "like she was 5 years old."
- The claimant then stated that she was quitting. The employer asked if the claimant was giving two weeks notice and/or finishing the two latest projects. The claimant stated "no, f--- your projects, because you will not give me a good reference."
13. The claimant suffers from depression and alcoholism. During the last week of work, the claimant developed a rash and hives due to the stress at work. The claimant felt increased anxiety at work and made an appointment with her doctor for later the following week. The claimant also noticed that she was experiencing hair loss during this time.
 14. The claimant did not request a leave of absence prior to quitting. Prior to leaving, the claimant also did not tell the employer about her medical and/or mental health condition.

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

The claimant was hired as a legal secretary with no experience in this field. She encountered difficulties meeting the employer's expectations regarding the quantity and quality of her work. A week before the claimant quit, during a heated discussion, the employer told the claimant she did not believe things were working out. The employer further stated she was losing money due to the claimant's inefficiency.

During her last week of work, after their heated discussion, there was a great deal of tension between the employer and the claimant. The two rarely spoke; the employer would roll her eyes when the claimant asked a question. The claimant felt increased anxiety and developed a rash and hives due to the stress at work. During her last day at work there were two incidents in which the employer and the claimant clashed, creating added stress for the claimant. Because of the continuing stress from the job, the claimant quit.

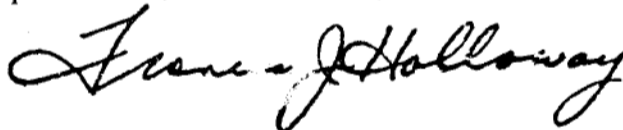
This job was stressful for the claimant; so stressful in fact that it caused her to become ill. The facts suggest that the root cause of the stress was the claimant's inability to perform the job well and the conflict that developed between the claimant and the employer because of the claimant's poor job performance. The claimant left because the stress of the workplace became intolerable once it reached the point of creating physical ailments. Leaving because the workplace is making you ill constitutes such an urgent, compelling and necessitous reason that the separation becomes involuntary within the meaning of section 25(e) of the Law cited above. Therefore the claimant is entitled to benefits.

Section 14(d)(3) of Chapter 151A of the General Laws is also pertinent and provides:

Section 14. (d) The commissioner shall determine the charges and credits to each employer's account, as follows:

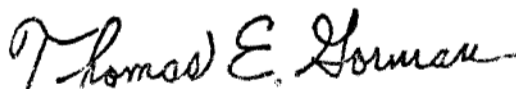
(3) ... Benefits which, in accordance with the provisions of this paragraph, would be charged to an employer's account shall not be so charged but shall be charged to the solvency account in any case where no disqualification is imposed under the provisions of clause (1) of subsection (e) of section twenty-five because the individual's leaving of work with such employer, although without good cause attributable to the employer, was not voluntary.

The Board modifies the Commissioner's decision. The claimant is entitled to benefits for the week ending December 20, 2003, and subsequent weeks, if otherwise eligible.



Francis J. Holloway
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - AUG 11 2004



Thomas E. Gorman
Member

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

LAST DAY - SEP 10 2004

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