



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-99108

CLAIMANT APPELLANT:

EMPLOYING UNIT:

Cheshire, MA 01225-9773

Williamstown, MA 01267

S.S.# __ ••

EMP.4. _

Office # 04

On February 27, 2006, in Boston, Massachusetts, the Board reviewed the written record and recording of the testimony presented at the hearing held by the Commissioner's representative on November 1, 2005.

On December 20, 2005, the Board allowed the claimant's application for review of the Commissioner's decision in accordance with the provisions of section 41 of Chapter ISIA of the General Laws, the Unemployment Insurance Law (the Law). The Board remanded the case to the Commissioner for further review and to make further findings of fact from the record. The Commissioner returned the case to the Board on January 25, 2006.

The Board has reviewed the entire case to determine whether the Commissioner's decision 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 his job. Therefore, Section 25(e)(2) of the Law does not apply in this case.

The issue to address is whether the claimant's separation was for good cause attributable to the employer or for an urgent, compelling and necessitous reason within the meaning of Section 25(e)(I) of the Law.

To conclude that the claimant's leaving was voluntary for good cause attributable to the employer, the claimant must show that the employer was responsible for his separation. In the instant case, the claimant brought about his own separation when he stopped reporting to work and made no effort to contact his employer. The claimant left the job site early on 08/30/05 and never contacted the employer again. Although it is true that the owner contacted the claimant in the past to tell him where he would be working, the claimant would also contact the owner when he did not hear from him and in this case, the claimant was fully aware that the project he was working on was not finished. However, knowing that, the claimant still did not report back to work or call his employer to ask what he should do next. The claimant was never told that he was laid off or discharged. He was never told not to report back to work until he heard from the employer. It was his obligation to continue reporting to work until his employer stated otherwise. It was not up to the claimant to assume that he was not needed on a particular project without asking the employer first.

The claimant contends that he was simply waiting for the employer to call him. This contention does not have merit nor is credible. The claimant was never told to stop reporting to work. He made an assumption on his own without speaking to the employer. Even when he did not hear from the employer over the next two or three days, he made no attempt to contact the employer to find out what was going on. This was his obligation. The fact that the claimant had told the employer that he was unhappy with his job gives less credence to the claimant's contention that he was simply waiting for a call to return to work.

Given the circumstances cited above, the claimant's separation was voluntary and does not constitute good cause attributable to the employer or an urgent, compelling and necessitous reason within the meaning of Section 25(e)(1) of the Law. Therefore, the claimant is not entitled to benefits.

The claimant is denied benefits for the week ending 09/17/05 and until he returns to work for eight weeks and in each of said weeks earns an amount equal to or in excess of his weekly benefit amount within the meaning of Section 25(e)(1) of the Law.

Section 25 of Chapter ISIA 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 (2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence

The Commissioner's representative held a hearing on November 1, 2005. The claimant and the employer appeared. The Board remanded the case to the Commissioner for further review and to make further findings of fact. The Commissioner's representative then issued the following consolidated findings of fact:

1. The claimant worked for the employer as a carpenter from 04/01/93 until his separation on 08/30/05.
2. The claimant brought about his own separation when he stopped reporting to work and failed to contact his employer.
3. The claimant had recently spoken to the owner and told him that he was unhappy with his job and hoped to begin his own business.
4. The claimant last worked on 08/30/05. He left the job site early because he believed that there was no more continuing work to be done there. Materials needed for the job were on back order, a fact corroborated by the employer at the hearing.

5. The employer stopped at the project on 08/30/05 and the claimant had already gone because he was ahead of where the owner thought he would be. The employer had earlier told the claimant that there was some tile work he would do after he finished his assigned project. The owner also told the claimant that he would be at his house, which was only two or three houses away from the project the claimant was working on.
6. The claimant did not do the tile work because another employee told him he would finish it the following day.
7. When the claimant left the project on 08/30/05, he did not stop at the owner's house to see what the owner wanted him to do next nor did he make any attempt to call the owner.
8. After the claimant did not report to work after 08/30/05, the owner heard that he was working for another contractor and assumed that he had quit.
9. It was uncharacteristic of the claimant not to call the employer to find out where he would be working next. At times, the employer would call the claimant but there were other times that when the claimant did not hear from the employer he would call him. They had worked this way together for over two years.
10. It was very seldom that the claimant did not have work or was out of work for any length of time. The situation always resolved itself by the owner notifying the claimant where he wanted him to work next or if not, the claimant would call the owner.
11. The job the claimant was working on was not finished. Even though the job needed some additional materials, the claimant knew that there was still work to be done.
12. The employer mailed the claimant a note with his final paycheck telling the claimant that they would call it even.
13. After receiving the letter, the claimant contacted the employer and asked "I guess that's it, I'm all done?" The employer told the claimant that he believed that he had quit when he did not report back to work and after he heard he was working with another contractor. The claimant explained that he believed just the opposite and the employer conceded that there may have been a misunderstanding between the two. The employer reiterated this fact during the hearing.
14. During the conversation the claimant asked if there was still work available but the employer indicated that he was still waiting for a building permit and had no work presently.
15. The claimant filed for unemployment benefits and was denied. He called his employer a second time and asked why he was denied. The employer told him that he simply told the local office the truth,
16. At no time did the owner tell the claimant not to report to work until he heard from the owner. The owner fully expected the claimant to report to work the following day.
17. The claimant did not establish a self-employment venture but did help out a contractor friend while not working for the employer.

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 worked as a carpenter from April 1, 1993 until August 30, 2005. The claimant last worked on August 30, 2005, and left that specific job site early as he believed that there was no continuing work to be done there. Throughout their working relationship, situations arose whereby the claimant was unsure about his next job location. It was very seldom that the claimant did not have work or was out of work for any length of time, and these situations always resolved themselves by the employer notifying the claimant where he wanted him to work next or if not, the claimant would call the employer.

The claimant did not report to work after August 30, 2005. The employer subsequently heard that the claimant was working for another contractor and assumed that he had quit. The employer mailed the claimant a note with his final paycheck telling the claimant that they would call it even. Upon receiving the letter, the claimant contacted the employer and asked: "I guess that's it, I'm all done?" The employer proceeded to tell the claimant that he believed that he had quit when he did not report back to work and after he heard he was working with another contractor. The claimant explained that he believed just the opposite and the employer conceded that there may have been a misunderstanding between the two. The claimant then asked if there was work available; however, the employer indicated that he presently had no work available.

Both the claimant and the employer conceded that there may have been a misunderstanding between the two concerning the claimant's status with the employer after August 30, 2005. While the claimant believed that the employer did not have continuing work available, the employer believed that the claimant had quit his employment. Subsequent to discussing this misunderstanding, the claimant attempted to secure employment with the employer, however, none was available. The claimant is, therefore, not subject to disqualification pursuant to Section 25(e)(1)(2) of the Law as cited above.

The Board modifies the Commissioner's decision. The claimant is entitled to benefits for the week ending September 17, 2005, and subsequent weeks, if otherwise eligible.



Kevin P. Foley
Chairman

BOSTON, MASSACHUSETTS

DATE OF MAILING - 11/20/06



Donna A. Freni
Member



Member

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

LAST DAY - 11/20/06

mh