COMMONWEALTH OF MASSACHUSETTS
DIVISION OF UNEMPLOYMENT ASSISTANCE
BOARD OF REVIEW
Govemment Center
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8:45 a.m. to 5:00 p.m.

DECISION OF BOARD OF REVIEW

On June 12, 2005, the Dorchester Division of the District Court remanded this case, docket number 0307 CV 1178, to the Board of Review. On March 13, 2006, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Commissioner's representative on July I, 2003, and December 5, 2005.

On July 17,2003, the Board issued a decision in accordance with the provisions of section 41 of Chapter ISlA of the General Laws, the Unemployment Insurance Law (the Law). The claimant exercised her right to appeal to the court under section 42 of the same Law. The Dorchester Division of the District Court remanded the matter to take additional evidence and to make further findings of fact. The Commissioner's representative held a remand hearing on December 5,2005. He returned the case to the Board on December 21, 2005.

The Board's July 17,2003, decision made the decision of the Commissioner, dated July 1,2003, the final decision of the Board. The Commissioner's decision concluded:

> The employer did not discharge the claimant Therefore, Section 25(e)(2) of the Law does not apply in this case.
>
> In accordance with Section 25(e)(I) of the Law, the burden is upon the claimant to establish by substantial and credible evidence that she left work voluntarily with good cause attributable to the employer or its agent, or involuntarily for urgent, compelling and necessitous reasons.
>
> The claimant did not meet her burden of proof in this case.
>
> There is no substantial and credible evidence that the claimant left work voluntarily for good cause attributable to the employer or its agent. To the contrary, it was clear to the: claimant that she did not have to accept the special retirement program offered by the emplolyer [sic] and that she could have continued working for the employer if she wished.
>
> Since the claimant did not establish that she left work voluntarily for good cause attributable to the employer or its agent, the question then becomes whether the claimant left work involuntarily for urgent, compelling and necessitous reasons. There is no substantial and credible evidence that the claimant left work for urgent, compelling and necessitous reasons within the meaning of the Law. The claimant could have stayed at work, if she chose to do so. However, she weighed the special incentives of the program and decided to accept the retirement program.

> Accordingly, the claimant is subject to disqualification and is denied benefits.
>
> The claimant is not entitled to receive benefits for the week ending April 5, 2003, and until she has worked at least eight weeks and in each week earned an amount equal to or in excess of her weekly benefit amount.

Section 25 of Cbapter ISlA of the General Laws is pertinent and provides, in part, as follows:

> Section 2S. No waiting period shall be allowed and no benefits shall be paid to an individual Wider 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 (I) 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 Commissioner's representative held a hearing on July 1,2003. Only the claimant appeared. The Commissioner's representative held a court-ordered remand hearing oo December 5,2005. Only the claimant appeared. The Commissioner's representative then consolidated his final findings of fact as follows:

I. The claimant worked for the employer as an Operator from August 18, 1972 until March 29, 2003, when she was separated from employment.

2. The claimant worked Monday to Friday from 7 AM to 2:30 PM, and every other Sunday with Monday off

3. The claimant initiated her separation by agreeing to accept the employer's offer of a voluntary retirement program.

4. In February 2003, the employer offered eligible employees, including the claimant, special economic incentives if they chose to retire at that time. The program was called the Enhanced Income Protection Plan, or EIPP. If they chose to accept the program, they were to be off the employer's payroll by March 29, 2003.

5. The employer directed its Managers not to influence employees one way or the other in deciding whether or not to accept the ElPP offer.

6. On March 4, 2003, the claimant signed and submitted to the employer the "employee volunteer form," indicating that she accepted the provisions of the ElPP, understood that her termination date would be March 29, 2003, and also understood that she could revoke her acceptance until March 14, 2003.

7. The claimant accepted the EIPP offer because she believed that she would be laid off or re-assigned to another location, if she did not accept the EIPP offer. The claimant believed this because she had heard rumors that the Brockton Office would be closing.

8. The employer had been reducing its nwnber of Operator Locations over a long period oftime because, with oew technology, Operators were becoming less necessary. Whenever the employer closed an Operator Location, the employer offered all the affected Operators a choice between relocating to another Operator Office within commuting distance or being laid off.

9. The claimant worked in the Brockton Office at the time she left employment and had worked there for two or three years. The claimant had worked in four other offices previously. All four had closed, and the claimant had chosen to relocate to another office location rather than be laid off. The claimant had worked at two different locations in Boston, one in Quincy, and one in Weymouth.

10. At the time the claimant left employment, the employer had only four Operator Offices left in the area. These were in Brockton, Fall River, Malden, and Providence. The claimant had no reason to believe that the Brockton office would be next to close, except for a rumor among employees.

11. Shortly after the EIPP was announced, a Union Steward told the claimant that, if she did not accept the EIPP, she would be laid off or re-assigned because Operator positions were being reduced by the employer. The claimant knew that the Union Contract was expiring in August 2003, and the claimant thought that the employer might want to close an office before that time.

12. The claimant never asked her Supervisor if her job was in jeopardy if she did not accept the EIPP, because she knew that her Supervisor could not say anything to influence her in her decision on the EIPP. When the claimant asked about the EIPP, her Supervisor said only that it was a good package.

13. If the claimant had decided not to accept the EIPP offer and the employer had decided later to close the Brockton Office, the claimant would have chosen to be laid off rather than be re-assigned to another location. The claimant would not have chosen re-assignment because all three of the other offices would have involved significantly more time to commute than her one-hour commute to Brockton. The claimant was responsible for meeting her four year old grandson when he was dropped off by bus from school each day. With a significantly longer commute, the claimant would not have been able to get home soon enough to meet her grandson. If she was not there to meet her grandson, the bus driver would have had to return the child to the school authorities.

14. Jt would have taken the claimant at least thirty to forty-five minutes more time to commute to Malden, *Fall* River, or Providence, than to Brockton.

15. The employer closed the Brockton office in 2004.

16. The employer used seniority in conducting lay offs. The claimant had the seventh highest seniority among the seventy-five operators in the Brockton office.

17. If the claimant had not accepted the EIPP offer, the employer would have continued to employ the claimant in Brockton or have offered the claimant an Operator position in the office in Malden, Fall River, or Providence.

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

Under G. L. C. ISLA, § 2S(e)(1), the burden of proof is upon the claimant to establish that she left employment for good cause attributable to the employer, or for an urgent, compelling and necessitous reason rendering her decision involuntary. In the present case, since there is no evidence that the claimant's separation was involuntary, the Board must decide whether she left with good cause attributable to the employer.

The claimant accepted a voluntary retirement program because she believed she would otherwise be laid off or reassigned to a location beyond her commuting distance. The question at issue is whether the claimant's belief was reasonable, White v. Director of the Division of Employment Security, 382 Mass. 596,597.598 (1981).

Due to technology advances, the number of operators the employer needed had been declining over several years. The employer had steadily been reducing the number of sites employing operators. The claimant had worked in four other locations, all of which had been closed. At the time the employer offered the voluntary retirement package, the claimant heard rumors that the Brockton office, the office in which she currently worked, was slated to be closed. She was told by a union steward that if she did not accept the package, she would be laid off or reassigned because the number of operator positions was being reduced. The employer directed managers not to influence employees regarding whether to accept the voluntary retirement package. The claimant's supervisor only said the voluntary retirement package was a good package.

When the employer decided not to provide specific information to its employees, the claimant was forced to rely on information from her union steward. In Lightof the employer's steady reduction in operator positions, history of closing operator locations, and information from her union steward, the claimant reasonably believed that her position in Brockton was to be eliminated. The claimant also believed she would be offered a transfer to one of the three remaining operator locations. However, each of those locations required at least an hour and a half commute for the claimant. Such a lengthy commute made those positions unsuitable.

Accordingly, when the claimant accepted the voluntary retirement package, she quit for good cause attributable to the employing unit within the meaning of section 25(e)(1) of the Law cited above.

The Board modifies its original decision. The Claimant is entitled to benefits for the week ending AprilS, 2003, and subsequent weeks, if otherwise eligible.

HOSTON, MASSACHUSETIS
VATE OF MAILING· MAR 14 2006

Kevin P. Foley
Chairman

Donna A. Freni
Member

Sandor J. Zapolin
Member

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

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LAST DAY- APR 132006