

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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GOVERNOR

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SUZANNE M. BUMP
SECRETARY, LABOR AND
WORKFORCE DEVELOPMENT

**BOARD OF REVIEW
DECISION**

JOHN A. KING, ESQ.
CHAIRMAN

DONNA A. FRENI
MEMBER

SANDOR J. ZAPOLIN
MEMBER

In the matter of:

Appeal number:

CLAIMANT APPELLANT:

EMPLOYING UNIT:

Office #13

On December 1, 2006, the Waltham Division of the District Court remanded this case, docket number 20651-CV-000678, to the Board of Review. On August 3, 2007, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Commissioner's representative on July 5, 2006, and May 14, 2007.

On August 16, 2006, the Board issued a decision in accordance with the provisions of section 41 of Chapter 151A 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 Waltham 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 May 14, 2007. She returned the case to the Board on May 18, 2007.

The Board's decision, dated August 16, 2006, denied the claimant's appeal making the Commissioner's decision the final decision of the Board of Review. The Commissioner's decision, dated July 6, 2006, concluded:

The claimant was not discharged; therefore, this case does not require analysis under the provisions of section 25(e) (2) of the Law. Instead, because the claimant left work the issue is whether her leaving of work was for good cause attributable to the employer or for an urgent, compelling, necessitous reason pursuant to Section 25(e)(1) of the Law.

The facts in this case show that the claimant left work because she relocated out of state with the hope that the move would benefit her autistic son. The claimant made this decision because her son was regressing due to the perceived inadequate quality of care that local physicians had provided to her son. Although none of the physicians recommended a new environment or new form of treatment for her son, the claimant relocated to Georgia after a friend offered her the opportunity to do so. The claimant so desperately wanted to help her son that she decided to relocate for an indefinite period in hopes of finding him better quality treatment which she believes she has now found in Georgia because of the one-on-one care that her son is currently receiving.

Although the claimant's motive for relocation was surely for a good reason, the employer was not responsible for the claimant's leaving the job as to show that the leaving of work was good cause attributable to the employer.

Neither has the claimant established by substantial and credible medical evidence that she had no choice but to relocate to Georgia for her son's medical condition. Consequently, it is concluded that the claimant did not leave work involuntarily for an urgent, compelling, necessitous reason within Section 25(e) (1) of the Law.

The claimant is subject to disqualification in accordance with these findings. Benefits are denied beginning with the week ending 5/13/06 and until the claimant earns in each of eight weeks an amount equal to or in excess of his weekly benefit amount in accordance with Section 25(e)(1) of the Law.

Section 25 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 a telephone hearing on July 5, 2006. Only the claimant participated. The Commissioner's representative held a court-ordered remand telephone hearing on May 14, 2007. Only the claimant participated. The Commissioner's representative then consolidated her final findings of fact as follows:

1. The claimant performed the duties of data entry for the employer for whom she began to work in November 2000. The claimant's last day worked was May 5, 2006.
2. The claimant worked between 9 a.m. and 3 p.m. daily, Monday through Friday. She earned \$12.75 hourly.
3. The claimant has an autistic son that was treated by various doctors in Massachusetts hospitals that did not seem to help her son. The claimant was so frustrated over this because her son appeared to regress.
4. The claimant's son had been diagnosed with autism since 2 ½ years of age. His symptoms worsened as he reached adolescence. None of the medication that had been prescribed for the claimant's son worked well for him.
5. When the claimant and her son lived locally, the claimant's son habitually woke up nightly, banging his head, screaming, and sometimes acting out in a violent manner.
6. The claimant and her son lived in an apartment complex.
7. The claimant's neighbors complained because they could not sleep due to the claimant's son [sic] nightly outburst. The claimant was overwhelmed with worry about her son and her neighbors.
8. The claimant was also worried about losing her job because she had to take as many as 10-12 days a month off because of her son's medical appointments and sudden calls to [sic] his school because of his behavioral problems.
9. About a month prior to the claimant's resignation, she was warned that her job was in jeopardy if her attendance problems persisted. This supports the claimant's worry that she was in the throes of losing her job.
10. Before the claimant relocated to Georgia, the claimant brought her son to Georgia where the environment appeared to have a calming effect on his behavior.
11. The claimant also wanted to relocate to Georgia because she had heard that a specific doctor was successful in treating autistic children.
12. The claimant has a friend in Georgia that offered the claimant an opportunity to live there where she might find better medical care for her son's condition. The claimant so desperately wanted to help her son and gave this offer serious consideration.

13. The claimant made the decision to relocate prior to her having given a two week notice to the employer. Before she had resigned, the claimant asked the employer if a company transfer to the Georgia area was possible. The employer did not have a facility in the Georgia area. Consequently, no transfer was possible or available
14. The claimant did not ask for a leave of absence before resigning because the move was possibly permanent in nature. A leave of absence would have proven futile in this regard.
15. None of the doctors that treated the claimant's son advised the claimant to relocate to another area of the country for a new form of treatment. The claimant made the decision to relocate on her own accord to benefit her son.
16. The claimant's son has improved since the relocation to Georgia because of a new doctor who spends more time with him on a one-to-one basis and because the environment in Georgia is less stressful.
17. The claimant's son has made progress to the extent that he is no longer taking medication for his autism.
18. The claimant's son is not receiving a new form of treatment in Georgia other than the doctor is spending more time with the patient and the environment appears to benefit him.
19. Since the claimant relocated to Georgia, she has found new work in late fall of 2006.
20. The claimant worked through the two week notice and left the job on May 5, 2006.
21. The claimant left work to relocate out of state. The claimant relocated on or about May 15, 2006.

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. 151A, § 25(e)(1), the burden of proof is upon the claimant to establish that she left employment either for good cause attributable to the employer, or for an urgent, compelling, and necessitous reason which rendered her separation as involuntary. Since there is no suggestion in the findings that the claimant was separated for good cause attributable to the employer, the Board must decide whether the claimant quit for an urgent, compelling, and necessitous reason.

The claimant quit her job to relocate to Georgia with her autistic son. The claimant's son had regressed recently, engaging in nightly bouts of screaming and head banging. The son acted violently at times. The son's medication was no longer effective.

Her son's behavior was problematic for the claimant both at home and at work. The claimant's apartment neighbors complained about the young man's loud, disruptive behavior at night. The claimant also missed a considerable amount of work because of emergency calls from the son's school and on-going medical appointments. The employer had warned the claimant about her persistent attendance problems.

The claimant sought an alternate, more successful, program for her son. A friend told the claimant about a doctor in Georgia who seemed to have success in treating autism. When the claimant and her son visited Georgia, the environment appeared to have a calming effect on the young man. Therefore, the claimant moved to Georgia to a less stressful environment, and to enroll her son in a program in which her son received more individualized attention from a doctor. The son's behavior has improved since the move.

Since the claimant's relocation was necessary for her son's health, the Board concludes that the claimant left work for an urgent, compelling, and necessitous reason which rendered her separation as involuntary within the meaning of section 25(e) of the Law cited above.

Section 14(d)(3) of Chapter 151A of the General Laws is also pertinent and provides, in part, as follows:

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 its original decision. The claimant is entitled to benefits for the week ending May 13, 2006, and subsequent weeks, if otherwise eligible.



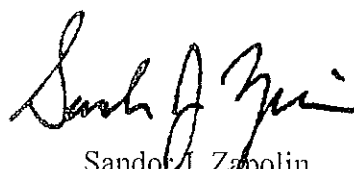
John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING -

AUG 17 2007



Donna A. Freni
Member



Sandor J. Zapolin
Member

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

LAST DAY - SEP 17 2007

COMMONWEALTH OF MASSACHUSETTS
GENERAL LAWS CHAPTER 151A, SECTION 42

APPEALS TO THE COURTS

"The commissioner or any interested person aggrieved by any decision in any proceeding before the board of review may obtain judicial review of such decision by commencing within thirty days of the date of mailing of such decision, a civil action in the district court within the judicial district in which he lives, or is or was last employed, or has his usual place of business, and in such proceeding, every other party to the proceeding before the board shall be made a defendant. If an appeal to the board of review is deemed denied pursuant to subsection (a) of section forty-one because the board failed to act upon such appeal, judicial review may be obtained by commencing a civil action as prescribed in the preceding sentence, except that the time for commencing such action shall run from the date such appeal is deemed denied. The commissioner shall be deemed to have been a party to any such proceeding before the board. The complaint shall state the grounds upon which such review is sought. The plaintiff shall serve a copy of the complaint upon each defendant by registered or certified mail, return receipt requested, within seven days after commencing the action for judicial review.

Except as otherwise provided in this section, or if inconsistent with the provisions of this section, such proceeding shall be governed by the Rules of Civil Procedure for the district courts and the municipal court of the city of Boston. The findings and decisions of the board shall be reviewed in accordance with the standards for review provided in paragraph (7) of section fourteen of chapter thirty A. Any proceeding under this section shall be given precedence over all other civil cases.

An appeal may be taken from the decision of the justice of the district court directly to the appeals court. Notice of appeal shall be filed in the office of the clerk of the district court within thirty days after entry of the judgment by the clerk. The completion of such appeal shall be made in accordance with the Massachusetts Rules of Appellate Procedure. Benefits shall be paid or denied in accordance with the decision of the trial court justice during the pendency of such appeal."

The commissioner shall make every reasonable effort to file with the court a certified copy of the decision of the board of review, including all documents and a transcript of all testimony taken at the hearing before said board or the commissioner as the case may be, within twenty-eight days after service of the complaint upon the commissioner or within twenty-eight days after the commencement of the action for judicial review by the commissioner. Each defendant shall file an answer within twenty-eight days after receipt of the complaint, except that the commissioner may, by way of answer, file in court within such time period a certified copy of the record of the proceeding under review.

IMPORTANT

This notice contains information about your rights or obligations, and should be translated immediately. If you need a translator, ask for a listing of translation services at your DUA office.

ВАЖНОЕ СООБЩЕНИЕ

В этом сообщении содержится информация о Ваших правах и обязанностях, и оно должно быть срочно переведено Вам. Если Вам нужен переводчик, попросите список переводческих компаний в своем DUA офисе.

IMPORTANTE

Este aviso incluye información sobre sus derechos y obligaciones, y debe traducirse de inmediato. Si necesita un traductor, solicite el listado de servicios de traducción en la oficina de la DUA correspondiente.

IMPORTANTE

Questo avviso contiene informazioni sui Suoi diritti ed obblighi e deve essere tradotto immediatamente. Se ha bisogno di un traduttore, chieda l'elenco dei servizi di traduzione presso la DUA.

IMPORTANTE

Este comunicado contém informações sobre os seus direitos ou obrigações. Ele deve ser traduzido prontamente. Se precisar de um tradutor, solicite no escritório DUA mais próximo uma lista dos serviços de tradução.

ສຳລັບ ງູ່ລະບົບອຸກຍລະອຽດກ່ຽວກັບທ່ານ, ເຊິ່ງ ທ່ານ ສະໄໝ ທີ່ ສຳລັບ ມີ ປະກອບດ້ວຍ ຫຼື ການສື່ສະພາລະຮັດອອບຕາງ ຫຼື ຂອງທ່ານ ໄດ້ຮັບ ທີ່ ໂລດ. ຖ້າ ທ່ານ ການ ໃຊ້ ທີ່ ສະພາບ, ທ່ານ ລາຍການ ປະກອບ ສະພາບ ທີ່ ມີ ໄວ້ ທີ່ ໃຊ້ ທີ່ ມານ. ການ ຕ້ອງການ DUA ຂອງທ່ານ

សំខាន់

លេខស៊ីស្តែមសំខាន់ៗ របស់អ្នកគួរតែដឹង ឬ គាំទ្រខ្លួនចំពោះ ។ អ្នកបរិច្ចាគប្រតិបត្តិការ របស់អ្នក ។ ប្រសិនបើអ្នកត្រូវការអ្នកបកប្រែ រួមមានទាំងសេវាកម្មបកប្រែ (សេវាកម្មបកប្រែសំខាន់ៗ DUA របស់អ្នក ។

ENPÒTAN

Nòt sa a genyen enfòmasyon sou dwa w oubyen obligasyon ke ou genyen, epi ou fèt pou ou fè tradwi l kounyè a. Si ou bezwen on moun ki pou tradwi pou ou, mande on lis ki genyen sèvis ke yo ofri pou tradiksyon nan biwo DUA ke ou konn ale a.

QUAN TRỌNG

Thông báo này bao gồm thông tin về quyền bạn hoặc trách nhiệm của quý vị và phải được thông dịch ngay. Nếu cần một thông dịch viên, hãy yêu cầu một danh sách dịch vụ thông dịch tại văn phòng DUA của quý vị.

重要

本通知包含有關閣下權利或義務的資訊，應即刻翻譯。如果閣下需要翻譯人員，請到閣下的DUA辦事處要求一份翻譯社的名單。