



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
BOARD OF REVIEW

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Tel. (617) 626-6400 • Office Hours: 8:45 a.m. to 5:00 p.m.

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**BOARD OF REVIEW
DECISION**

In the matter of:

Appeal number:
BR-111513

CLAIMANT APPELLANT:

EMPLOYING UNIT:

EMP. #

Hearings Docket #

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Cheryl Lynch, a review examiner of the Division of Unemployment Assistance (DUA), to deny benefits for one week. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on July 31, 2009. She filed a claim for unemployment benefits with the DUA and was denied benefits in a determination issued on September 1, 2009. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner, in a decision rendered on October 14, 2009, reversed the agency's initial determination as to all weeks except for the week ending August 15, 2009, for which the claimant was denied benefits.

Benefits were denied for that week after the review examiner determined that the claimant was not in unemployment, by reason of being "housebound" in a domestic violence shelter. After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the appeal and afforded the parties an opportunity to submit written reasons for agreeing or disagreeing with the decision. Neither party responded. Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the decision below, and the claimant's appeal.

The issue on appeal is whether the claimant's residence in a domestic violence shelter rendered her ineligible for benefits.

Findings of Fact

The review examiner's findings of fact and credibility assessments are set forth below in their entirety:

1. The claimant began working for the employer, an employment staffing organization, in April 2009.
2. Most recently, the claimant worked part time as a Teacher's Assistant until 7/31/09, when she satisfactorily completed her project and the employer did not have a new assignment for her.
3. The claimant filed a claim for unemployment insurance benefits on July 31, 2009. The effective date of the claim is July 26, 2009.
4. On approximately August 10, 2009, the claimant was the victim of domestic violence, so she entered a crisis shelter.
5. On approximately August 12, 2009, the claimant spoke to the employer's Supervisor and indicated she was "housebound" in a shelter due to domestic violence. For the first seven days when someone arrives at the crisis shelter, she or he must remain there without travel or community access, for safety reasons.
6. On August 12, 2009, the Supervisor considered the claimant on a leave of absence and asked the claimant to contact her when she was ready to return to working.
7. The claimant was housebound at the shelter from August 10 through August 17, 2009. After seven days, the new arrivals to the shelter are no longer housebound.
8. On approximately August 17, 2009, once the claimant was no longer housebound, the claimant contacted the Supervisor to seek work, but work was not available. The claimant stayed at the shelter through August 23, 2009.
9. On September 1, 2009, the Division of Unemployment Assistance ("Division") mailed the claimant a Notice to Claimant of Disqualification, indicating that the claimant was subject to disqualification from receiving benefits under Sections 29(a) and 1(r) of the Law, for the week ending August 8, 2009 and thereafter.

Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 25(e), provides in pertinent part as follows:

An individual shall not be disqualified from receiving benefits under this clause if the individual establishes to the satisfaction of the commissioner that the reason for the individual's leaving work was due to domestic violence, including:

- (1) the individual's reasonable fear of future domestic violence at or on route to or from the individual's place of employment;
- (2) the individual's need to relocate to another geographic area in order to avoid future domestic violence;
- (3) the individual's need to address the physical, psychological and legal effects of domestic violence;
- (4) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence;
- (5) any other respect in which domestic violence causes the individual to reasonably believe that termination of employment is necessary for the future safety of the individual or the individual's family.

These provisions have been further explicated in § 1043C of the DUA's Service Representative's Handbook:

Shelter Restrictions on Availability: Claimants who must seek shelter with an agency that provides temporary shelter to victim of domestic violence may be required to restrict their availability for work while a resident of the shelter facility. The organization providing shelter may require that the claimant leave work with a current employer [See 1200: Voluntary Leaving] or not work while a resident at the shelter. This stipulation is often imposed in order to protect the claimant and/or dependents as well as other shelter residents who might be endangered should an abuser contact the claimant at a known place of employment or follow the claimant from a place of employment to the shelter. The shelter may also require that the claimant devote a substantial amount of time conducting a search for permanent housing a condition of staying in the shelter.

If the sole reason that the claimant is restricting availability is to comply with the requirements of a shelter provider in order to receive or continue to receive shelter from an agency that provides shelter to victims of domestic violence, the claimant

may still be available for suitable work. If the claimant indicates a willingness to look for work and to relocate from the shelter within a reasonable period of time is offered a job, no disqualification will be imposed.

In our view, the above-cited section of the DUA Handbook is directly on point to the facts of this case. The claimant was required to remain "housebound" in the shelter for a week as a requirement of the shelter's own policies. She indicated a desire to work within a very reasonable time (one week) after entering the shelter. Therefore, under the Agency's own interpretation of G.L. c. 151A, §25(e)'s domestic violence provisions, she must be deemed to be eligible for benefits during the week she was "housebound" in the shelter.

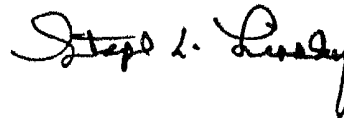
We, therefore, conclude as a matter of law that the claimant is not disqualified from receiving benefits for the week she was in the shelter.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending August 15, 2009 and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF MAILING - September 17, 2010



John A. King, Esq.
Chairman



Stephen M. Linksy, Esq.
Member

Member Sandor J. Zapolin did not participate in this decision.

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

LAST DAY TO FILE AN APPEAL IN COURT-

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.

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.

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."

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, chiedi 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.

ສຳຄັນ
ງູ້ລະບົບວຽກລະອຽດດຽວກັນກັບຜົນງານ, ເຊິ່ງບໍ່ມາດຕະໂນບທີ່
ຄຳແຈ້ງບໍ່ ປະກອບດ້າງ ໆ ກັບສິດທິລະບາດຮັດຂອບຕ່າງ ໆ
ຂອງທ່ານໄດ້ຮັບທີ່ໂລດ. ຖ້າ ທ່ານຕ້ອງການໃຊ້ຜູ້ແປພາສາ, ໃຫ້ຂໍ
ລາຍການບໍລິການແປພາສາທີ່ ມີໄວ້ໃຫ້ໃຊ້ໄດ້ນຳມ. ມາຕ້ອງການ
DUA ຂອງທ່ານ

សំខាន់

សេចក្តីជូនដំណឹងនេះ មានព័ត៌មានអំពីសិទ្ធិ ឬ កាតព្វកិច្ចរបស់អ្នក ។ សូមអានសេចក្តីជូនដំណឹងនេះ
ជាភាសា ។ ប្រសិនបើអ្នកត្រូវការប្រកបរប្រែ ឲ្យបានភាសាដទៃទៀតសម្រាប់ការប្រកបរប្រែ
ស្រេចចាប់ពីការចាប់ DUA របស់អ្នក ។

ENPÖTAN

Nöt sa a genyen enfömasyon sou dwa w cubyen obligasyon ke ou genyen, epi ou fè 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 hạn 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。

