



COMMONWEALTH OF MASSACHUSETTS
 DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
 BOARD OF REVIEW
 Government Center
 19 Staniford Street
 Boston, MA 02114

Tel. 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- 24019098**

APPELLANT: (employer)

[REDACTED] Services, Inc.
 [REDACTED] d
 [REDACTED]

RESPONDENT: (claimant)

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 [REDACTED]
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Office #27

On September 28, 1998, the Waltham Division of the District Court Department remanded this case, Civil action # 98CV-732, to the Board of Review. On February 19, 1999, the Board reviewed the written record and the recordings of the testimony and evidence presented at the hearings held on June 19, 1998, and February 9, 1999.

On August 5, 1998, the application of the employer for review, by the Board of Review of the decision of the Deputy Director, dated June 24, 1998, was denied in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The employer exercised its right of appeal to the courts under section 42 of the same Law. The case was then remanded to the Board by the Waltham District Court for the taking of additional evidence, limited to the testimony of the witness of the employer that was unable to appear at the original hearing, the testimony of the claimant, and the testimony of any other witnesses that would be pertinent to factual issues raised by the witness of the employer.

The Board remanded the case to the Deputy Director on October 29, 1998, in accordance with the Court Order. The Deputy Director returned the case to the Board of Review on February 18, 1999. On February 24, 1999, after further review, the Board remanded the case again for the Deputy Director to make subsidiary findings from the record. The Deputy Director returned the case to the Board with consolidated findings of fact on March 8, 1999.

The Board has now reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The Deputy Director's decision, dated June 24, 1998, concluded that:

The claimant was not discharged from his employment. Therefore, Section 25(e)(2) does not apply in this case.

In accordance with Section 25(e)(1), the burden of proof is upon the claimant to establish by substantial and credible evidence that he left for good cause attributable to the employer or its agent, or for urgent, compelling and necessitous reasons.

In view of the facts, the claimant has met his burden of proof in showing that he left work for good cause attributable to the employer or its agent.

The claimant testified that he was verbally abused and that his job was threatened if he did not create false documents. The claimant believed that if he followed the supervisor's directive he would be committing fraud and guilty of a crime. The claimant also testified that he could not complain to anyone or he would risk problems in obtaining future work in the field because his supervisor was an influential and powerful person in mental retardation work. This leaving is with good cause attributable to the employer or its agent.

A letter from the executive director was submitted but was hearsay evidence. The claimant's supervisor was not at the hearing nor was the executive director. The employer was represented by the director of finance and administration who, given her remoteness from the conversations between the claimant and his supervisor, was not in a position to rebut the claimant's direct testimony, and her testimony to the contrary was hearsay.

The claimant's direct testimony was consistent and since his supervisor was not present at the hearing, the testimony was unrefuted and accepted by this review examiner as credible.

In view of the facts, the claimant is not subject to disqualification and is entitled to collect benefits.

The claimant is entitled to receive benefits for the week ending August 16, 1997 and subsequent, if otherwise eligible.

Section 25(e)(1) of Chapter 151A of the General Laws is pertinent and provides 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...

The Deputy Director's representative held a hearing on June 19, 1998. Both appeared. On February 9, 1999, the Deputy Director's representative held a remand hearing, as required by the Order of the District Court. The claimant appeared with his attorney. The Executive Director, the Director of Finance, the claimant's supervisor, and the employer's attorney appeared to represent the employer. Whereupon, the Deputy Director's representative consolidated his final findings of fact as follows:

1. The claimant worked as the director of residential services for the employer's mental health agency from September 4, 1996 until he quit on April 24, 1997.
2. The claimant quit because he believed that his supervisor criticized him in a manner that amounted to verbal abuse. The claimant also decided to quit because he believed that his supervisor wanted him to falsify and create documentation to assist the employer in retaining their state license. The claimant's beliefs caused him to be under a lot of stress at work.
3. The claimant was never asked to create false documents by his supervisor. The claimant was never asked to do anything improper or unethical by his supervisor.
4. The claimant's job was not in jeopardy at the time that he chose to resign.

5. The only person named by the claimant, as having witnessed the claimant being verbally abused by his supervisor was the director of finance.
6. The director of finance never witnessed the claimant being verbally abused by his supervisor. The claimant was not verbally abused by his supervisor.
7. The claimant's supervisor was critical of the claimant's work in her role as his supervisor but she was not verbally abusive and she never asked the claimant to falsify or improperly create any documentation. The stress that caused the claimant to resign was self-imposed.
8. The claimant never raised any of his beliefs or concerns with anyone prior to his decision to resign.
9. The claimant never spoke with his supervisor about any problems he had with the way she spoke to him or the work directives given to him by her, prior to submitting his resignation.
10. The claimant never spoke with his supervisor's superior, the executive director, prior to resigning from his position.
11. The claimant never spoke with the employer's human resource department about any difficulties he was having with his supervisor prior to resigning from his position.
12. The employer has a grievance policy which the claimant acknowledged receipt of by signature at the time of his orientation.
13. The claimant never filed a grievance with the employer regarding his dealings with his supervisor.

The Deputy Director's representative also provided the following credibility assessment:

The testimony offered by the employer witnesses was consistent and was accepted by this review examiner because it was credible. The testimony by the director of finance was particularly compelling as it supported the testimony of the claimant's supervisor. The director of finance had a good relationship with both the claimant and the claimant's supervisor and there was no evidence that she was not being truthful in her testimony or that she had any motivation to not tell the truth. The claimant testified that the director of finance witnessed his supervisor verbally abusing him, [sic] the director of finance credibly denied the claimant's version of events. The claimant's supervisor credibly testified that she never verbally abused the claimant and never asked the claimant to falsify any documents or do anything improper or unethical. The claimant's lack of supporting evidence and his failure to make any job preservation efforts adds weight to the employer's argument that the employer's version of events is more credible.

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

The claimant initiated his separation from work because he believed that his supervisor wanted him to falsify documents and because he believed that the supervisor's manner of criticizing him amounted to verbal abuse. However, the claimant did not take steps to preserve his employment by addressing the concerns with upper management before resigning. The findings establish that the claimant's supervisor did not verbally abuse him. The findings also show that the claimant's supervisor never required that he falsify documentation or do anything improper or unethical.

Since the findings show that his beliefs were neither valid nor reasonable, and because he left employment without affording the employer an opportunity to address his concerns, the Board concludes that the claimant has failed to show that his leaving work was with good cause attributable to the employing unit. Consequently, the claimant is subject to the disqualifying provisions of Section 25(e)(1) of the Law.

The decision of the Deputy Director is modified. The claimant is denied benefits for the week ending August 16, 1997, and until he has had at least eight weeks of work and in each of said weeks has earned an amount equivalent to or in excess of his weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF MAILING -

JUL 28 1999

Thomas E. Gorman
Thomas E. Gorman
Member

Kevin P. Foley
Kevin P. Foley
Member

APPELLANT: I.D. [REDACTED]
RESPONDENT: I.D. [REDACTED]

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

LAST DAY - **AUG 27 1999**

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