

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

BOSTON MUNICIPAL COURT DEPARTMENT
CENTRAL DIVISION
C.A. NO. 002221

JOHN A KING, Deputy Director,
Division of Employment and Training,

Plaintiff

v.

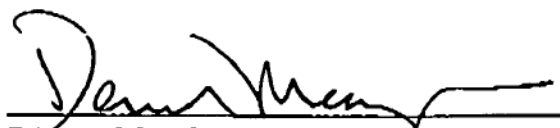
DECISION AND ORDER



Defendant

The findings and decision of the Board of Review (the "Board") of the Division of Employment and Training have been reviewed in accordance with the standards of review set forth in G. L. c. 30A, § 14 (7). After review, the decision of the Board to modify the review examiner's decision and lift the previously imposed disqualification is **AFFIRMED.**

December 7, 2004


Dermot Meagher
Judge

*Claimant represented by Rick McIntosh of
Legal Services for Cape, Plymouth and
Islands, Hyannis*



COMMONWEALTH OF MASSACHUSETTS
DIVISION OF EMPLOYMENT AND TRAINING
BOARD OF REVIEW
Government Center
19 Staniford Street
Boston, MA 02114

Tel. (617) 826-6400
Office Hours:
8:45 a.m. to 5:00 p.m.

COPY

**DECISION
OF
BOARD OF REVIEW**

****CORRECTED DECISION****

In the matter of:

Appeal number: **BR-87291**

CLAIMANT APPELLANT:

[REDACTED]

Office # 43

On March 28, 2003, in Boston, Massachusetts, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Deputy Director's representative on November 21, 2002, and March 4, 2003.

On January 10, 2003, the Board allowed the claimant's application for review of the Deputy Director's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law). The Board remanded the case to the Deputy Director to take additional testimony and to make additional findings of fact. The Deputy Director returned the case to the Board on March 6, 2003.

The Board has 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 claimant's appeal is from the Deputy Director's decision which concluded:

Given the facts as stated above, it is concluded that the claimant was disqualified from receipt of benefits under Section 25(e)(1) of the Law for the week ending March 24, 2001 and until she had worked and earned an amount equal to her weekly benefit rate in each of 8 weeks of subsequent employment. Additionally, that determination became final when the claimant failed to request reinstatement of her appeal on the matter that resulted in a default on the part of the claimant.

Although the claimant has performed wage-earning services since she filed the benefit claim, from which she was disqualified from receipt of benefits, the claimant has never earned gross wages in any week that equaled or exceeded the benefit rate of the benefit claim from which she was disqualified.

Consequently, the claimant has failed to satisfy the previously imposed disqualification under Section 25(e) of the Law.

In view of the facts, the claimant continues to be subject to disqualification.

The claimant has failed to satisfy a previously imposed disqualification under Section 25(e) of the Law and that disqualification remains in effect.

Section 25(e)(1) & 74 of Chapter 151A of the General Laws are pertinent and provide as follows:

Sections 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 . . .

Section 74. This chapter shall be known and may be cited as the Employment and Training Law, and shall be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family.

The Deputy Director's representative held a hearing on November 21, 2002. The claimant appeared with counsel. The Deputy Director's representative held a remand hearing on March 4, 2003. The claimant appeared with counsel. The Deputy Director's representative then consolidated his final findings of fact as follows:

1. The claimant initiated a new claim for benefits in claim sequence number 002 on March 20, 2001.

Shortly thereafter, it was determined that the claimant was monetarily eligible to receive weekly benefits in the amount of \$289.00. This amount became the claimant's weekly "benefit rate."

2. On April 9, 2001, a determination was issued that disqualified the claimant from receipt of benefits under Section 25(e)(1) of the Law for the week ending March 24, 2001 and until she had worked and earned an amount equal to, or in excess of

her weekly benefit rate in each of 8 weeks of subsequent employment.

3. The claimant appealed the determination in question, but failed to attend the hearing that was scheduled to be heard on the matter on May 9, 2001. The claimant did not seek reinstatement (sic) of the hearing in question, and thus, the determination issued on April 9, 2001 became final.
4. The claimant has been employed since March 20, 2001. However, since that date, the claimant has never earned gross wages in excess of \$289.00 during any weeks she has worked.
5. The claimant's most recent benefit claim (claim sequence 003) was filed on July 31, 2002.

With respect to this claim, Claim Sequence 003, the claimant's weekly benefit rate was determined to be \$55.00. This benefit rate was determined by a mathematical equation (sic) based on the gross wages paid to her during the base period of the benefit claim.

The base period of the claimant's sequence 003 benefit claim was the period beginning July 1, 2001 and ending June 30, 2002.

During this base period, the claimant worked for only 1 employer and was paid gross wages as follows:

07/01/01-	10/01/01-	01/01/02-	04/01/02-
<u>09/30/01</u>	<u>12/31/01</u>	<u>03/31/02</u>	<u>06/30/02</u>

PAGE 3

BR-87291

6. The claimant's sole base period employer for her claim sequence 003 was Hill's Dining Room Inc. The claimant worked for this employer from June 1, 2001 until July 26, 2002, at which time she was laid off due to a lack of work.
7. The employer, on whom the claimant's previously imposed disqualification of April 9, 2001 was based on April 9, 2001 was not a base period employer on the claimant's benefit claim sequence 003.

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

The claimant filed her original claim for benefits on March 20, 2001, but was disqualified on April 9, 2001, under Section 25(e)(1) of the Law for the week ending March 24, 2001, and until she has had at least eight (8) weeks of work with earnings equivalent to or in excess of her weekly benefit amount. The claimant has returned to work for over one year, but she has not earned over her original (from 2001) benefit rate (\$289.00) in at least eight (8) weeks of new work.

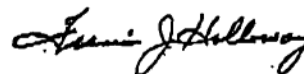
The Board concludes that in the instant case, the Deputy Director's decision yields far too harsh a result. We do not believe that the Legislature intended that a claimant should be disqualified throughout the remainder of her lifetime and until she is able to have earnings equivalent to or in excess of a weekly benefit amount established over one year **prior to the instant claim, which is based on new employment.

Section 74 of the Law, cited above, specifically states that the Employment and Training Law "shall be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family." We see no constructive purpose in a disqualification that remains imposed, potentially forever, after a claimant has returned to work for over a year and can monetarily establish a new claim based on new employment.

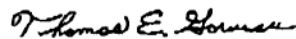
The Board, therefore, concludes that when the claimant's benefit year ended in March 2002, so too did the disqualification period on the separation associated with it, unless the employing unit against which the claimant was disqualified, is also a base period employer on the new benefit year claim. This is to preclude the possibility of benefit charges against the very employer who had prevailed on the original claim, a result which was also surely not intended by the Legislature.

The Board modifies the Deputy Director's decision. The previously imposed disqualification is lifted.

BOSTON, MASSACHUSETTS
 **DATE OF MAILING - April 10, 2003



Francis J. Holloway
 Chairman



Thomas E. Gorman
 Member

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

**LAST DAY - May 12, 2003



HEARINGS DEPARTMENT
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HYANNIS MA026010000

APPEAL RESULTS

BR-87291

BR
Y1
183

Docket : 338755

Mail Date : NOVEMBER 22, 2002

Appellant : CLAIMANT

Local Office : 43-0

Claimant :
[REDACTED]

Date Of Determination : 08/19/02
Hearing Request Filed : 08/21/02
Hearing Date : 11/21/02
Location Of Hearing : HYANNIS

Employer :
D.E.T.
37 MAIN ST.
TAUNTON MA027800000
[REDACTED]

Original Determination :
AFFIRMED [X]
OVERTURNED []
OTHER []

Appearances :

Claimant [X] Employer []
Claimant's Rep/Attorney [] Employer's Rep/Attorney [] Interpreter []

.....
You may Appeal this Decision to the Board of Review.
The last date to file an Appeal is DECEMBER 23, 2002
.....

Jane Swift, Governor

Commonwealth of Massachusetts
Angelo Buonopane, Director of Department of Labor & Workforce Development
John A. King, Director Employment and Training



Hearings Department
Southeast Regional Office
37 Main Street
Taunton, MA 02780
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DECISION

DOCKET NUMBER: 338755

BR
71
2-3

I. STATUTORY PROVISION(S) AND ISSUE(S) OF LAW:

Whether the claimant has satisfied a previously imposed disqualification. MGL 151A, s. 25(e)

II. FINDINGS OF FACT:

1. The claimant initiated a new claim for benefits on March 20, 2001.

Shortly thereafter, it was determined that the claimant was monetarily eligible to receive weekly benefits in the amount of \$289.00. This amount became the claimant's "benefit rate."

2. On April 9, 2001, a determination was issued that disqualified the claimant from receipt of benefits under Section 25(e)(1) of the Law for the week ending March 24, 2001 and until she had worked and earned an amount equal to, or in excess of her benefit rate in each of 8 weeks of subsequent employment.

3. The claimant appealed the determination in question, but failed to attend the hearing that was scheduled to be heard on the matter on May 9, 2001. The claimant did not seek reinstatement of the hearing in question, and thus, the determination issued on April 9, 2002 became final.

4. The claimant has been employed since March 20, 2001. However, since that date, the claimant has never earned gross wages in excess of \$289.00 in any week worked.



DOCKET NUMBER: 338755

III. CONCLUSIONS & REASONING:

The claimant and her attorney attended the hearing.

Given the facts as stated above, it is concluded that the claimant was disqualified from receipt of benefits under Section 25(e)(1) of the Law for the week ending March 24, 2001 and until she had worked and earned an amount equal to her weekly benefit rate in each of 8 weeks of subsequent employment. Additionally, that determination became final when the claimant failed to request reinstatement of her appeal on the matter that resulted in a default on the part of the claimant.

Although the claimant has performed wage-earning services since she filed the benefit claim, from which she was disqualified from receipt of benefits, the claimant has never earned gross wages in any week that equaled or exceeded the benefit rate of the benefit claim from which she was disqualified.

Consequently, the claimant has failed to satisfy the previously imposed disqualification under Section 25(e) of the Law.

In view of the facts, the claimant continues to be subject to disqualification.

IV. DECISION:

The determination is affirmed.

The claimant has failed to satisfy a previously imposed disqualification under Section 25(e) of the Law and that disqualification remains in effect.

HEARINGS DEPARTMENT

**BY: Scott E. Pachico - nfm
REVIEW EXAMINER**

COPIES TO:

Claimant
Claimant's Attorney
File

Commonwealth of Massachusetts

Jane Swift, Governor

Angelo Buonopane, Director of Department of Labor & Workforce Development
John A. King, Director Employment and Training