

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF MASSACHUSETTS

SUFFOLK, SS.

BOSTON MUNICIPAL COURT
ROXBURY DIVISION
CIVIL ACTION NO: 0502 CV 0073

MOSHAY MCLEAN,

Plaintiff

v.

JOHN P. O'LEARY, IN HIS CAPACITY AS
COMMISSIONER OF THE DIVISION OF
UNEMPLOYMENT ASSISTANCE AND
NORTHEASTERN FAMILY INSTITUTE
MASSACHUSETTS, INC.,

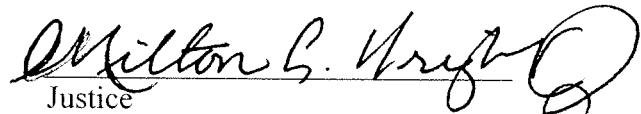
Defendants

PROPOSED ORDER

Both parties^[1] in this matter have petitioned the Court with a "Joint Motion for Reversal," the Motion is allowed and The Decision of the Board of Review shall be modified so that the check paid to Ms. McLean dated July 2, 2004 shall be deemed to have been paid no later than June 29, 2004 and to have been paid in the second calendar quarter of 2004.

WHEREFORE, Ms. McLean's benefit entitlement shall be recalculated, the Decision of the Board of Review is reversed and Plaintiff shall be paid unemployment benefits for her claim filed September 27, 2004 if otherwise eligible.

Dated: 6/14/05


Justice

^[1] The employer did not participate in the hearing before the review examiner and has not filed an answer in this action.

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MOSHAY MCLEAN,)
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 Plaintiff)
 v.)
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 JOHN P. O'LEARY, IN HIS CAPACITY AS)
 COMMISSIONER OF THE DIVISION OF)
 UNEMPLOYMENT ASSISTANCE AND)
 NORTHEASTERN FAMILY INSTITUTE)
 MASSACHUSETTS, INC.,)
)
 Defendants)

JOINT MOTION FOR REVERSAL

Now come the plaintiff, Moshay McLean, and the defendant Commissioner of the Division of Unemployment Assistance, and state:

1. The issue in this case is whether the plaintiff has been paid sufficient wages to qualify for unemployment benefits under G.L. 151A, 24(a);
2. In order to be eligible for unemployment benefits, Ms. McLean must have been paid in her base period (usually the last four completed quarters) amounting to at least 30 times the weekly benefit rate. G.L. c. 151A, § 1(a), 30. The weekly benefit rate is set at 50% of the individual's average weekly wage. G.L. c. 151A, § 29(a). If the individual receives wages in only two quarters in the base period, as did McLean, the average weekly wage is an amount equal to "one thirteenth of the total reported for the highest quarter." G.L. c. 151A, §1 (w).

- 3. Qualification for benefits turns on the date wages are paid, not earned. Naples v Commissioner of the Department of Employment and Training, 412 Mass. 631, 634 (1992).
The Court did not address the issue presented here of wages paid in a quarter other than the quarter required by statute.
- 4. On July 2, 2004, plaintiff was paid wages for the pay period ending June 23, 2004. If those wages are included with wages paid in the third quarter of 2004, plaintiff would not qualify for benefits under G.L. c. 151A, 24(a).
- 5. Wages must be paid within six days of the end of the pay period. G.L. c. 148, § 149.
- 6. Wages for the pay period ending June 23, 2004 were required to be paid no later than June 29, 2004.
- 7. Had those wages been paid on or before June 29, 2004, i.e., in the second calendar quarter, plaintiff would qualify for benefits under G.L. c. 151A, § 24(a).

Therefore, the parties move that this Court order that the wages paid plaintiff on July 2, 2004 be deemed to have been paid as required by G.L. c. 148, § 149, that is, no later than June 29, 2004, in the second quarter of 2004, that plaintiff's qualifications for benefits be recalculated, and that she be paid benefits to which she is other wise entitled.

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*Allowed
 MGH
 6.7.04*