



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

Charles F. Hurley Building • 19 Staniford Street • Boston, MA 02114  
Tel. (617) 626-6400 • Office Hours: 8:45 a.m. to 5:00 p.m.

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LT. GOVERNOR

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

BR-103415-A (June 28, 2007) -- Denied benefits to police officer fired for committing assault and battery off duty. Board rejected proposition that the claimant's alcoholism mitigated misconduct of a serious nature. Held acts of violence against another person to be deliberate misconduct directly antithetical to the core public protection mission of the police. *[Note: The District Court affirmed the Board of Review's decision.]*

On June 22, 2007, in Boston, Massachusetts, the Board reviewed the written record and recordings of the testimony presented at the hearings held by the Commissioner's representative on February 22, 2007, and March 15, 2007.

On May 3, 2007, the Board allowed the employer's application for review of the Commissioner's decision in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Unemployment Insurance Law (the Law). The Board remanded the case to the Commissioner for further review and to make further findings of fact from the record. The Commissioner returned the case to the Board on May 30, 2007.

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

The appeal of the claimant is from a decision of the Commissioner which concluded:

In this case the claimant's actions which resulted in his termination from employment were alcohol related events. Further, the claimant was found to be an alcoholic, and that illness was the root cause for his being separated from employment. Therefore, the claimant's separation from employment must be investigated under Section 25(e)(1)[sic], as [sic] involuntary separation.

The burden of proof in cases involving Section 25(e)(1) [sic] of the Law is placed on the claimant to prove that his separation was voluntarily with good cause attributable to the employer or its agent, or involuntarily for urgent, compelling and necessitous reasons. In this case, it was not established that there was any good cause attributable to the employer or their agent. However, the testimony and the evidence provided, did establish an urgent, compelling, and necessitous reason for his separation, his actions while under the influence of alcohol. In that the claimant is making a sincere effort to overcome this illness, his leaving is considered under the law to be urgent, compelling and necessitous so as to make his separation involuntary and not subject to disqualification within the meaning of the Law. The claimant is entitled to unemployment benefits if otherwise eligible under Section 25(e)(1)[sic] of the Law.

The claimant is entitled to benefits for the week ending 12/16/06 and subsequent [sic] if otherwise eligible.

**N.B.:** 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. (Section 14(d)(3)) [sic]

**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....(2) by discharge shown to the satisfaction of the commissioner by substantial and credible evidence to be attributable to deliberate misconduct in wilful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. . . .

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 hearings on February 22, 2007, and March 15, 2007. Both parties appeared with representation at each hearing. The Board remanded the case to the Commissioner for further review and to make further findings of fact. The Commissioner's representative then issued the following consolidated findings of fact:

1. The claimant worked as a police officer for the employer, a municipality.
2. The claimant worked full-time, being employed by the employer from 11/18/02 until 7/20/06.
3. The claimant had been provided the employer's policy at hire and had attended the police academy from 11/02 until 4/14/03 graduation to become an officer.
4. The employer's policy prohibits "conduct unbecoming an officer; the commission of any specific act or acts of immoral, improper, disorderly or intemperate personal conduct which reflects discredit upon the officer himself, upon his fellow officers or upon the Police Department." It further prohibits "criminal conduct; the commission of any felony or misdemeanor, or violation of the criminal laws or statutes of the United States or any local jurisdiction."
5. The claimant was involved in an incident on 10/22/05 at a lounge in Agawam while off duty in which a complaint was filed regarding his behavior towards a female employee of the lounge. He was under the influence of alcohol at the time of the incident. Based on an investigation of the incident, the claimant was "suspended for ten (10) working days", required to "work an extra twenty (20) tours of duty without pay or....attend the Employee Assistance Program and successfully complete counseling for anger management and alcohol use/abuse."
6. The claimant had complied with the recommendations of the Town officials and returned to work as a police officer.

7. The claimant was involved in another incident on 6/19/06. That incident involved a female police officer he had been having a relationship with. Fellow officers were called to the house of the female officer and arrested the claimant for domestic assault and battery, stalking, threatening to commit a crime, and malicious destruction of personal property valued at over \$250.00, and disorderly conduct. The claimant was indicted on the charges.
8. On 6/20/06, the Chief of Police suspended the claimant pursuant to Massachusetts General Laws Chapter 31, Section 41, for conduct unbecoming a police officer, criminal conduct, and "the use of intoxicating beverages while off duty that rendered you unfit to report for duty" with the claimant having booked off sick.
9. On 6/20/06, the Mayor sent "Notice of Contemplated Termination Pursuant to Massachusetts General Laws Chapter 31, Section 41."
10. On 6/20/06, the claimant appeared in court for a hearing on endangerment[sic]. He voluntarily accepted confinement for observation and treatment at Bridgewater for alcohol abuse.
11. On 6/26/06, the chief of police revoked the claimant's license to carry firearms.
12. The claimant was determined to be an alcoholic, diagnosis[sic] with alcohol dependence. He completed the 29 day program for substance /alcohol abuse [sic] 7/18/06 and continues to seek help with this, attending AA meetings.
13. The claimant was terminated by the employer following hearings regarding his conduct unbecoming an officer. That termination was effective 7/25/06.
14. The claimant was not found guilty of any charges until 10/4/06. Based on his actions of 6/19/06, on 10/4/06 the claimant was found guilty of malicious destruction of property less than \$250.00; assault and battery; and threatening to commit a crime. He was found not guilty of criminal harassment.
15. The claimant filed his claim for unemployment benefits on 12/13/06.

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

The claimant did not leave his employment within the meaning of section 25(e)(1) of the Law; nor was his separation involuntary under the provisions of section 25(e) of the Law. The employer discharged the claimant.

Under G. L. c. 151A, § 25(e)(2), the burden of proof is upon the employer to establish that the claimant was discharged for either a knowing violation of a reasonable and uniformly enforced rule or policy, or for deliberate misconduct in wilful disregard of the employer's interests. The employer has met its burden in the present case.

The claimant, a police officer, worked for the employer from November 18, 2002 until his discharge on July 25, 2006. The employer discharged the claimant for conduct unbecoming a police officer.

The claimant was aware that as a police officer he was not to engage in any act of improper, disorderly, or intemperate personal conduct which reflected discredit upon himself, his fellow officers, or upon the Police Department. He was also aware that he was not to engage in any criminal conduct while an employee of the Police Department. The claimant knew of this reasonable expectation through his training at the police academy and by his receipt of the policy itself at time of hire.

On June 19, 2006, the claimant, while under the influence of alcohol, physically assaulted a female police officer with whom he was having a relationship. This unprovoked attack resulted in fellow police officers being summoned to the home of the victim. The claimant was arrested and, thereafter, indicted on several criminal charges: domestic assault and battery; stalking; threatening to commit a crime; malicious destruction of personal property valued at over \$250.00; and disorderly conduct. On October 14, 2006, the claimant was found guilty by the court on three charges: assault and battery; threatening to commit a crime; and malicious destruction of property.

Although the Board recognizes that the court rulings were not issued until after the claimant’s discharge from employment, the guilty findings, nevertheless, demonstrate that on June 19, 2006 the claimant violated the employer’s code of conduct in the most egregious fashion by engaging in criminal acts.

The actions of a police officer must be held in a different light than those of other employees whose responsibilities do not involve law enforcement and public protection. “Police officers must comport themselves in accordance with the laws that they are sworn to enforce *and* behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. . . . In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Police Comm’r of Boston v. Civil Service Comm’n, 22 Mass. App. Ct. 364, at 371 (1986) (emphasis in original). The Board does not accept the proposition that the claimant’s alcoholism can neutralize -- under the color of “mitigation” -- the disqualifying effect of his misconduct when the actions that led to his discharge were crimes of such a serious nature. Indeed, the particular crimes at issue here, which involved acts of violence against another person, are directly antithetical to the core public protection mission of the police. *See Police Comm’r of Boston v. Civil Service Comm’n*, 39 Mass. App. Ct. 594 at 597, 601 (1996) (affirming Boston Police Commissioner’s determination that “off duty, drunk and belligerent conduct” of a police officer was “incompatible with public safety”).

Since the claimant clearly engaged in behavior which was conduct unbecoming a police officer, his discharge was attributable to deliberate misconduct in willful disregard of the employing unit’s interest within the meaning of section 25(e)(2) of the Law.

The Board modifies the Commissioner's decision. The claimant is denied benefits for the week ending December 16, 2006, 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 – June 28, 2007**

/s/  
John A. King, Esq.  
Chairman

/s/  
Donna A. Freni  
Member

/s/  
Sandor J. Zapolin  
Member

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

**LAST DAY – July 28, 2007**