



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-109426-CTRM (April 7, 2009) -- Sole shareholder of a closely held corporation was not eligible for benefits, because the business remained profitable. Claimant chose to shut it down in the face of an increasingly competitive market, but there was no evidence that he was compelled to do so by economic circumstances.

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Division of Unemployment Assistance (DUA) to deny unemployment benefits following his separation from employment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

Benefits were denied on the ground that the claimant voluntarily quit employment, pursuant to G.L. c. 151A, § 25(e)(1), when the claimant orchestrated the cessation of business at the corporation he solely owned. The claimant filed a claim for unemployment benefits, which was denied in a determination issued by the agency on August 1, 2007. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, which the claimant attended, the DUA review examiner affirmed the agency's initial determination in a decision rendered on September 17, 2007. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court pursuant to G.L. c. 151A, § 42.

On September 24, 2008, the District Court ordered the Board to obtain further evidence. Consistent with this order, we remanded the case to the DUA review examiner to take additional evidence and make new consolidated findings of fact. The claimant and his attorney attended the remand hearings.

The Board has reviewed the written record and recordings of the testimony presented at the DUA hearings.

The issue on appeal is whether the claimant left work either for good cause attributable to the employer or for an urgent, compelling, and necessitous reason which rendered his separation as involuntary.

Consolidated Findings of Fact

The DUA review examiner's consolidated findings of fact and credibility assessments, which were issued following the remand hearing held pursuant to the District Court's order, are set forth below in their entirety:

1. The claimant was the sole corporate stockholder for an insurance premiums financing company from June 1, 1999 until June 1, 2007, when the claimant ceased performing duties for the corporation in anticipation of dissolving the company.
2. The claimant decided to dissolve the corporation because he believed that the corporation was no longer profitable.
3. In 1999, there were 31 businesses in the Commonwealth that had state licenses to finance insurance premiums. In 2007, there were 55 such licensed businesses.
4. Because there were more businesses in the market, the claimant's market share had decreased. As a result, the claimant believed his profits were shrinking.
5. In 2004, the corporation's interest rate on its line of credit with the bank was 4.00%. This was the prime interest rate. In 2007, the claimant's interest rate rose to 8.25%.
6. From 2003 through 2006, the corporation paid the following amounts in interest annually:

2003	\$140,956
2004	\$146,170
2005	\$140,486
2006	\$125,348

7. From 2003 through 2006, the total wages for the corporation's five [sic] employees were:

2003	\$160,667
2004	\$137,340
2005	\$180,740
2006	\$164,932

8. From 1999 to 2007, the price of a United States Postal Service postal stamp rose from 33 cents per stamp to 41 cents per stamp.
9. The employer mails tens of thousands of pieces of mail each year.
10. The employer's employee health insurance premiums increased annually by an unknown amount.
11. From 2003 to 2006, the corporation's gross profits were:

2003	\$870,289
2004	\$897,779
2005	\$1,045,282
2006	\$702,418

12. From 2003 to 2006, the corporation's taxable income was:

2003	\$128,398
2004	\$136,172
2005	\$165,217
2006	\$114,727

13. Under Massachusetts General Laws Chapter 255C, Section 22, the corporation could only charge 1.5% interest of the unpaid monthly balance of customer obligations, which amounts to 18% annually. The corporation could not exceed that interest rate.
14. The claimant decided that the corporation should stop taking new business in August 2006. The corporation earned income on outstanding customer obligations that were initiated prior to August 2006.
15. The claimant believes that if the number of competitors, the amounts of the employees' wages, the cost of health insurance, the cost of postage stamps, and the prime interest rate had not increased, the claimant would not have wound down the corporation's business in anticipation of dissolution.
16. The corporation rented its physical space.
17. The claimant was the only officer for the corporation. From 2003 through 2006, the corporation's officer compensation was:

2003	\$123,000
2004	\$26,000
2005	\$204,000
2006	\$122,828

18. The corporation will not file bankruptcy. All of its debts will be satisfied before dissolution.
19. During the month ending August 31, 2005, the corporation had fees debited from its account due to account activity in the amount of \$3,012.03. See Remand Exhibit 18.
20. The claimant did not provide exact data as to how many contracts were cancelled or how much new business was added during 2003.
21. During the year of 2004, the corporation cancelled 4,731 contracts. Each contract was billed for nine months and cancelled at the completion of billing. See Remand Exhibit 20.
22. During the year of 2005, the corporation cancelled 4,019 contracts. Each contract was billed for nine months and cancelled at the completion of billing. See Remand Exhibit 19.
23. From January 1, 2006 through August 4, 2006, the corporation had 1,746 contracts of new business. Each contract was billed for nine months and cancelled thereafter. See Remand Exhibit 7.
24. Generally speaking, each customer only had one policy for which the premiums were to be financed. To that extent, the customer-to-policy ratio was 1:1. Sometimes one customer might have two policies for two car insurance premiums, but that was a rare circumstance.
25. The number of policies and the number of premiums financed are proportionally related, though the claimant did not know the exact number of premiums financed per policy or per year.
26. Between the first and second quarters of 2006, the corporation laid off four employees. See Remand Exhibit 8.
27. The corporation's license from the Division of Banks to finance premiums expired on December 31, 2006 and was not renewed. See Remand Exhibit 17.

Ruling of the Board

The Board adopts the review examiner's consolidated 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.

Since the claimant initiated his leaving work, his eligibility for unemployment benefits will be determined either under G.L. c. 151A, § 25(e)(1), which states in relevant part:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for ... the period of unemployment next ensuing ... 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,...

or under the following portion of G.L. c. 151A, § 25(e):

... 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 claimant, who was both the principal employee and sole owner of the corporation for which he worked, bears the burden of showing that economic necessity forced him to cease its operations. Jahn v. Director of the Division of Employment Security, 397 Mass. 61, 63 (1986) (seller of business must show that he was compelled to do so by its unprofitability, in order not to be deemed ineligible for unemployment benefits for having voluntarily separated from employment). The review examiner's consolidated findings make clear that although the claimant may have chosen to dissolve the business when he concluded that the corporation was no longer sufficiently profitable for his purposes, the business nonetheless remained both profitable and a source of significant personal compensation to the claimant in his capacity as a corporate officer, up to the time when he ended it.

The claimant's testimony on remand depicted a business operating in an increasingly competitive environment. The number of his competitors increased at the same time as interest rates rose and postage and health insurance costs increased. However, the evidence shows conclusively that the business remained profitable throughout its final years of operation. Although the claimant stopped accepting new business at the beginning of August 2006 (and did so, one assumes, in anticipation of a planned wrap up of operations the following July), the consolidated findings show that the claimant still paid himself compensation as a corporate officer in excess of \$120,000 for that year. Profits in the last years of the corporation's operations may well have been less than the claimant desired, but the record is quite clear that corporation remained profitable. For 2006, the corporation showed a net income — after deduction for business expenses such as the claimant's own compensation — of \$114,727. In fact, from 2003 through 2006, the corporation's net income never dipped below \$100,000 per year.

Indeed, claimant's business appears to have been more profitable than the business that was sold in the Jahn decision, 397 Mass. 65, referenced above. In Jahn, the net income for the last three years of the business ranged from a loss of \$4,634 to a profit of \$8,445. The owner's salaries for these years were \$20,000 to \$40,000. The SJC concluded, on these facts, that the claimant/owner was not compelled by unprofitability to have sold his business, but rather that he voluntarily ended his employment. Id. at 63-64.

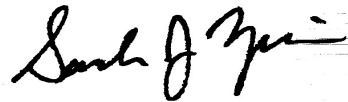
We reach the same conclusions in the present case. The claimant did not show that his business ever declined into non-profitability, and, for that reason, we do not conclude that he was compelled to cease operations. We, therefore, conclude as a matter of law that the claimant voluntarily left work and is therefore not eligible for unemployment benefits under G.L. c. 151A, § 25(e).

The DUA review examiner's decision is affirmed. The claimant is denied benefits for the week ending June 23, 2007 and subsequent weeks thereafter, 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.



John A. King, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF MAILING - April 7, 2009



Sandor J. Zapolin
Member

Member Donna A. Freni 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 – May 7, 2009