



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.

## BOARD OF REVIEW DECISION

BR-98220 (Nov. 22, 2005) -- Dispute with the Board of Directors over a business decision did not constitute good cause for a CEO to leave employment under G.L. c. 151A, § 25(e)(1). Denied benefits.

On November 16, 2005, in Boston, Massachusetts, the Board reviewed the written record and a recording of the testimony presented at the hearing held by the Commissioner's representative on August 12, 2005.

On September 21, 2005, the Board allowed the claimant'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 October 27, 2005.

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:

The Division considered the employer a witness. The employer sent a statement to the Division on July 27, 2005.

The facts establish that the claimant disagreed with a decision of the employer and its board of directors concerning the future direction of the company. The facts further establish that the claimant wanted to proceed in one direction, emerging markets, while the board of directors and the CEO wanted to maintain existing customers in order to have a revenue stream. Had the employer agreed to [sic] the claimant's position, he would have remained.

The hearing warrants a conclusion that the claimant quit his employment, because he disagreed with the direction of the company. From the viewpoint of unemployment, this represents a disagreement with the policies and procedures of the employer. It does not represent good cause to quit employment attributable to the employer, it represents a personal choice.

The claimant is disqualified for the week ending 06/25/05 and until he has had eight weeks of work and in each week has earned an amount that is equal to or greater than his benefit amount.

**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....

The Commissioner's representative held a hearing on August 12, 2005. Only the claimant appeared. 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 applied for benefits on June 24, 2005. The Division disqualified the claimant on July 15, 2005. The claimant appealed on July 19, 2005.
2. The claimant worked for the employer from June 28, 2004 to June 3, 2005. The claimant worked as a senior vice-president for product management and customer engineering. The claimant worked at product strategy and product direction. The employer provided a voice over internet protocol. The claimant reported to the CEO.
3. The claimant was the most senior officer in the company after the CEO.
4. The claimant was hired about a year before his separation to change the direction of the company.
5. The claimant quit his employment.
6. A week before the claimant left employment on June 3, 2005, he informed the CEO that he needed to move on. The CEO asked and the claimant agreed to work an additional week in order to transition the claimant's work.
7. The claimant and the employer mutually agreed that it would be in the best interest of both parties for the claimant to resign.
8. Prior to the claimant's decision to leave, the senior management of the company debated the direction of the company. The claimant proposed that the company focus on emerging markets. The board of directors and the CEO decided to maintain the current direction of the company so that it would have a revenue stream.
9. The claimant believed that leading employees in the direction chosen by the employer would not be good for the employees of the company and against his personal integrity.
10. The employer wrote a letter to the Division drafted especially for the claimant appeal hearing. The employer wrote, "This has reference to the above hearing appeal which is scheduled for August 12, 2005. The resignation of [Claimant], Senior Vice President was based on mutual agreement. Due to strategic difference of opinion between the company and [Claimant's] views on future company direction and product strategy, it was in the best interest of both parties (mutually acceptable) to part ways. Therefore, [Employer] is not contesting this appeal and will support [Claimant's] unemployment assistance claim."

11. If the claimant had agreed with the decision of the board of directors and the CEO, he would have remained with the company.
12. If the company did not succeed, he felt that his credibility would have come into question in the future.

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:

Under G. L. c. 151A, § 25(e)(1), the burden is on the claimant to establish by substantial and credible evidence that he left work voluntarily for good cause attributable to the employer or its agent. The claimant has not met his burden.

The claimant left his employment due to a difference of opinion on the future direction of the company. The claimant was the senior vice-president for product management and custom engineering. He was hired for the purpose of changing the direction of the company. He sought to change the direction of the company towards emerging markets.

The Board of Directors and the CEO, however, decided to maintain the current direction to assure a continued revenue stream. The claimant believed that his leading employees in that direction would be against his personal integrity and would not be in the best interest of the employees. His employer and he agreed that his leaving employment was in the best interest of the company.

The claimant did not leave his position for good cause under Section 25(e)(1) of the Law. The facts, as found by the Commissioner's representative, are that a dispute regarding strategic business plans for the company caused the claimant's resignation. The courts have determined that good cause in this type of situation requires being asked to perform work that is clearly antithetical to that for which a claimant was hired. That phrase has been defined to include being required to work in intolerable conditions or being asked to perform duties which could subject a claimant to "professional sanction, criminal prosecution or liability in tort." Sohler v. Director of the Div. of Employment Security, 377 Mass. 785, 789 (1979).

While the claimant may have believed his reputation and future employment opportunities might be jeopardized by what he believed was an incorrect business judgment on the part of the Board of Directors and CEO, this does not rise to the level of "good cause" as defined in Sohler. Furthermore, the employer's requirement that the claimant follow its business strategy is not equivalent to being asked to perform work clearly antithetical to that for which the claimant was hired.

Accordingly, the claimant has not established by substantial and credible evidence that he had good cause for leaving work attributable to the employing unit. The claimant is subject to the disqualifying provisions of Section 25(e) of the Law cited above.

The Board affirms the Commissioner's decision. The claimant is disqualified for the week ending 6/25/05 and until he has had eight weeks of work and in each week has earned an amount that is equivalent to or in excess of his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING – November 22, 2005**

/s/  
Kevin P. Foley  
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)**

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**LAST DAY- December 22, 2005**