THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

59412494

SENNOTT, THOMAS
34 Old Cedar Vlg
Bridgewater, MA 02324-1063

Hearings Department
Southeast Regional Hearings Office
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CLAIMANT ID: 1888393

CLAIM ID: 201401
February 10, 2015

HEARINGS APPEAL RESULTS

CLAIMANT [APPELLANT]:

THOMAS SENNOTT

34 Old Cedar Vlg
Bridgewater, MA 02324-1063

Claimant ID #: 1888393
Issue ID#: 0013 6997 33-02

EMPLOYER:

GOOD SAMARITAN MEDICAL CENTER, A CARITAS FAMILY HOSPITAL

235 N PEARL ST
BROCKTON, MA 02301-1794

EAN #: 10030269-0

Hearing Date: 12/29/2014

Hearing Type: In-person

Original Determination: Indefinitely Ineligible

Hearing Decision: Reverse

Attendance:

Attended	Name	Role	Attendance Type
Yes	SENNOTT, THOMAS	Claimant Appellant	In-person
Yes	GOOD SAMARITAN MEDICAL CENTER, A CARITAS FAMILY HOSPITAL	Employer Non Appellant	In-person

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DECISION

ISSUE ID: 0013 6977 33 02

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

MGL Chapter 151A, §§25(e)(1) & (e)(2) - Whether there is substantial and credible evidence to show that the claimant left work voluntarily with good cause attributable to the employer or its agent, or involuntarily for urgent, compelling and necessitous reasons, or by discharge for deliberate misconduct in willful disregard of the employing unit's interest, or for a knowing violation of a reasonable and uniformly enforced policy or rule, unless the violation was the result of the employee's incompetence.

II. FINDINGS OF FACT:

1. The claimant worked full time as a security officer for the employer, a hospital, from June 18, 2012 until May 16, 2014, when he was discharged.
2. The claimant worked a set schedule of hours Monday through Friday 3pm to 11pm. The claimant was paid $19.00 per hour.
3. The claimant's immediate supervisor was the Security Manager.
4. The employer maintained a policy regarding the use of handcuffs until March 14, 2014 when the policy was retired. The handcuff policy that was previously in effect stated, "Non sworn security officers may be authorized to use handcuffs per the facility Security Director and in accordance with facility policy and applicable laws and regulations of the jurisdiction where the hospital is located. Officers must have satisfactorily passed certification training and maintain annual competency." The employer did not provide the claimant with this policy. The employer did not notify the Security Department that the policy had been retired.
5. The employer did maintain a policy and procedures manual titled "Use of Minimal Force," which states, "If an individual's action becomes aggressive or threatening to the safety of staff or others, the action of subject must be impeded. The use of approved defensive tools approved by the Medical Center, such as handcuffs or OCAT pepper spray, may be used depending upon the level of resistance encountered." The claimant worked as a reserve police officer. On June 23, 2012, the claimant completed training for defensive tactics which certified him to use handcuffs, which was effective through June 30, 2014.

6. The employer maintained an expectation that the claimant would not use handcuffs to restrain a patient. The employer maintained this expectation because the employer did not permit employees to utilize handcuffs to restrain an individual. The employer had never informed the claimant that he was not permitted to use handcuffs to restrain patients. During the course of his employment, several other employees including another supervisor had utilized handcuffs to restrain patients
7. The employer maintains a policy entitled "Use of Minimal Force" which advises all the employees of the Department of Security and Safety that the least amount of force necessary to control a person (patient, visitor or employee) or prevent a harmful act should be used. It also states that an employee should not use or permit the use of excessive force. The employer maintains this policy to ensure a safe environment for all its patients and employees. The consequence for violation of this policy is corrective action from counseling up to and including termination based on the severity of the force.
8. The employer maintained an expectation that the claimant would practice de-escalation techniques prior to the use of any physical force on an individual (patient, visitor or employee) and use the appropriate amount of force required to control the individual. The employer's expectation is reasonable given its interest in ensuring a safe work environment for its employees and patients and to prevent injury to its employees and/or the individual. On November 10, 2012, the claimant attended CPI training (Nonviolent Crisis Intervention Training). The Nonviolent Crisis Intervention program is a safe, non-harmful behavior management system designed to help human service professionals provide for the best possible care, welfare, safety, and security of disruptive, assaultive, and out-of-control individuals.
9. On May 4, 2014, the claimant worked the 7am to 3pm shift. At approximately 8:30am, emergency room personnel requested the assistance of the claimant to remove a patient who had been released from care out of the hospital. The patient was yelling, swearing and refusing to leave the hospital.

10. The claimant and two other officers went into the room where the patient was located with a nurse. The claimant asked the patient how he was and the patient told the claimant to go fuck himself. The claimant and the other officers instructed the patient that he needed to get dressed and exit the hospital. The patient continued to yell and swear at the officers. The officers and the nurse tried to dress the patient and the patient began threatening their lives. The patient began punching and kicking. The patient kicked the nurse in the chest. The patient finally dressed, but continued to verbally abuse the security officers and the nurse. The patient was punching on the bed and tried to attack the officers. The officers escorted the patient out of the hospital using a CPI transport position. The security officers released the patient and instructed him to leave the premises because he was trespassing. The patient charged at the officers and swung at them. The patient was walking aggressively towards the officers with his chest pushed out and telling them that he was a gang member and going to return to kill the officers. The claimant pushed the patient to create distance between the patient and the security officers. The patient closed in on the claimant and the claimant leaned back and put his fists up in a fighting stance to defend himself. The patient continued to yell at the security officers and walk towards them in an aggressive manner. Several employees, patients and visitors were walking in and out of the hospital entrance. A female nurse walked outside to inquire if she should call the police. The patient bumped into the nurse. When the patient bumped into the nurse, the claimant and another security officer took the patient to the ground and held him there to prevent the patient from injuring another employee or a visitor. The security officers instructed the nurse to call the cops. The patient threatened to kill the claimant and the other security officer. The security officer in-charge of the shift retrieved a set of handcuffs from his vehicle and handed them to the claimant and the other security officer participating in the restraint. The claimant and the security officer participating in the restraint placed the handcuffs on the patient and then walked him into the security officer to wait for the police. The claimant placed the handcuffs on the patient to provide a safe environment. The patient was arrested by the police.
11. On May 16, 2014, the employer mailed the claimant a letter terminating his employment.
12. The employer discharged the claimant for the use of unauthorized restraints (handcuffs) on a patient and alleged use of excessive force against the patient on May 5, 2014.

III. CONCLUSIONS & REASONING:

The claimant and his representative attended the initial hearing and the two (2) continued hearings. The employer and the employer's representative attended the initial hearing and both of the continued hearings.

The claimant did not quit his employment. Therefore, Section 25(e)(1) is not applicable in this case.

In accordance with Section 25(e)(2) of the Law, the burden is upon the employer to establish by substantial and credible evidence that the discharge of the claimant was attributable to a knowing violation of a reasonable and uniformly enforced policy or rule of the employer, or due to deliberate misconduct in willful disregard of the employer's interest.

The employer discharged the claimant for the use of unauthorized restraints (handcuffs) on a patient and alleged use of excessive force against the patient on May 5, 2014.

The employer has not met its burden required by the Law.

Relative to the first reason the employer discharged the claimant, the employer had not maintained a handcuff policy since March 14, 2014. The handcuff policy that was previously in effect stated, "Non sworn security officers may be authorized to use handcuffs per the facility Security Director and in accordance with facility policy and applicable laws and regulations of the jurisdiction where the hospital is located. Officers must have satisfactorily passed certification training and maintain annual competency." The claimant was not aware this policy existed as he had never received it from the employer. The employer did maintain a policy and procedures manual regarding "Use of Minimal Force," which states, "If an individual's action becomes aggressive or threatening to the safety of staff or others, the action of subject must be impeded. The use of approved defensive tools approved by the Medical Center, such as handcuffs or OCAT pepper spray, may be used depending upon the level of resistance encountered." Unfortunately, the employer failed to establish a written rule or policy was in effect regarding the use of handcuffs at the time the incident occurred, which caused the claimant to be discharged. Therefore, the employer failed to establish by substantial and credible evidence that the discharge of the claimant for the use of handcuffs was due to a knowing violation of a reasonable and uniformly enforced rule or policy.

The question then becomes whether the claimant's use of handcuffs on the date in question was due to deliberate misconduct in willful disregard of the employer's interest.

In that regard, the employer maintained an expectation that the claimant would not use handcuffs to restrain a patient. The employer maintained this expectation because the employer did not permit employees to utilize handcuffs to restrain an individual. However, the claimant was not aware of the employer's expectation as the employer had never informed the claimant that he was not permitted to use handcuffs to restrain patients. In addition, during the course of his employment, several of the claimant's supervisors had used handcuffs to restrain patients.

The claimant does not dispute that he and another security officer placed a set of handcuffs on a patient at the workplace in an effort to restrain him. However, the claimant provided direct and credible testimony at the hearing that he was not aware he wasn't authorized to use handcuffs since the employer never informed him of such and he had witnessed other security officers including a supervisor using handcuffs as a restraint device. Furthermore, on the date in question the officer in charge was the individual who handed the claimant and the other security officer the handcuffs to place on the patient.

Given the above, the claimant's use of handcuffs on the date in question cannot be construed as deliberate misconduct.

Relative to the second reason the employer discharged the claimant, while the employer has a policy that has a reasonable application to their interest, the consequence for violation of this policy is corrective action; from counseling up to and including termination based on the level of the force used. Therefore, the employer's policy is not uniformly enforced.

Given the above, the employer failed to establish by substantial and credible evidence that the discharge of the claimant for the alleged use of excessive force was due to a knowing violation of a reasonable and uniformly enforced rule or policy.

The question then becomes whether the claimant's level of force on the date in question was excessive and due to deliberate misconduct in willful disregard of the employing unit interest.

In that regard, the employer maintained an expectation that the claimant would practice de-escalation techniques prior to the use of any physical force on an individual (patient, visitor or employee) and use the appropriate amount of force required to control the individual. The employer's expectation is reasonable given its interest in ensuring a safe work environment for its employees and patients and to prevent injury to its employees and/or the individual. On November 10, 2012, the claimant attended CPI training (Nonviolent Crisis Intervention Training).

The employer alleged the claimant used an excessive level of force when dealing with the patient outside the hospital on May 5, 2014. It is not disputed that the claimant pushed the patient outside the hospital. However, the claimant testified that he was trying to create distance between the patient and the security officers as the patient continuously walked towards the officers in an aggressive manner with his chest pushed out and making verbal threats to kill them. The claimant did not dispute that at one point while outside he leaned back and raised his fists. The employer testified that the claimant's stance was a fighting stance used to provoke the patient. However, the claimant testified that he was positioning himself in a defensive stance as the patient was being verbally and physically aggressive towards the claimant. The employer also alleged the claimant did not attempt to deescalate the patient. However, the claimant testified that he attempted to deescalate the patient inside the hospital to no avail and that de-escalation is not effective with all individuals. Based on all of the testimony and evidence presented at the hearing, the employer failed to establish that the claimant's level of force when dealing with this patient was excessive as he was physically aggressive towards the officers and a nurse. The patient continuously refused to leave the hospital property, threatened the lives of the security officers and exhibited all of the aggressive behavior at an entrance where employees and visitors were entering and exiting the hospital. The claimant testified that the level of force used was in an effort to maintain the safety of the hospital, its patients, visitors and employees. Based on the totality of the evidence and testimony presented in this case, the employer failed to establish that the claimant's use of force in the situation which resulted in his discharge was excessive and contrary to the employer's interest.

Accordingly, the claimant is not subject to disqualification under Section 25(e)(2) of the Law and benefits are allowed.

IV. DECISION:

The determination is reversed.

The claimant is entitled to receive unemployment benefits under Section 25(e)(2) of the Law for the week ending May 17, 2014 and subsequent weeks thereafter if otherwise eligible.

HEARINGS DEPARTMENT

BY: Heidi Saraiva

REVIEW EXAMINER

COPIES TO:

Claimant
Claimant's Attorney
Employer
Employer's Rep/Attorney
Local Office
File

Appendix A

Appeal Filed Date:7/24/2014

Issue ID:0013 6997 33-02

Issue Type	Issue Start Date	Issue End Date	Decision
Discharged	5/16/2014		Reverse

Additional Notes:

This notice contains important information regarding the appeal identified on the first page of this notice. It is important to have it translated immediately. You may need to respond by a certain date to protect your rights.

Esta notificación contiene información importante sobre la apelación identificada en la primera página de esta notificación. Es importante que este formulario se traduzca de inmediato. Es posible que usted tenga que responder para una determinada fecha para proteger sus derechos.

Este aviso contém informações importantes relacionadas à apelação identificada na primeira página do aviso. É importante que este documento seja traduzido imediatamente. Pode ser necessário que você responda dentro de um prazo específico para proteger seus direitos.

В настоящем уведомлении содержатся важные сведения об апелляции, указанной на первой странице настоящего уведомления. Необходимо незамедлительно обеспечить его перевод. Чтобы защитить свои права, вам, возможно, необходимо будет ответить до определенной даты.

Avis sa gen enfòmasyon enpòtan konsènan apèl ki idantifye sou premye paj avi sa. Li trè enpòtan pou fè yon moun tradwi sa pou ou touswit. Ou ka bezwen repon avan yon dat spesifik pou pwoteje dwa w yo.

Il presente avviso contiene importanti informazioni in merito al ricorso riportato nella prima pagina del presente documento. Tradurre quanto prima il presente modulo. È possibile che si richieda risposta entro una certa data al fine di proteggere i diritti del soggetto.

Cet avis contient d'importants renseignements sur l'appel identifié en première page de cet avis. Il est important de le faire traduire immédiatement. Il se peut que, pour protéger vos droits, vous deviez répondre avant une certaine date.

កំណត់ហេតុនេះមានព័ត៌មានសំខាន់ ពាក់ព័ន្ធនឹងបណ្តឹងតវ៉ា
នៅក្នុងទំព័រដំបូង នៃកំណត់ហេតុនេះ។
វាសំខាន់ណាស់ដែលមានការបកប្រែយ៉ាងឆាប់រហ័ស។
អ្នកប្រហែលជាត្រូវការតបត
តាមកំណត់កាលបរិច្ឆេទដើម្បីការពារសិទ្ធរបស់អ្នក។

Thông báo này có các thông tin quan trọng về việc kháng cáo đã được xác định trên trang đầu tiên của thông báo này. Việc dịch ngay thông báo này là rất quan trọng. Quý vị có thể cần phải trả lời chậm nhất vào ngay cụ thể để bảo vệ quyền của mình.

ໜັງສືແຈ້ງການນີ້ລວມມີຂໍ້ມູນທີ່ສຳຄັນກ່ຽວກັບການຂໍອຸທອນທີ່ໄດ້ກຳນົດ
ຢູ່ໃນໜ້າທຳອິດຂອງໜັງສືແຈ້ງການນີ້. ການເອົາໜັງສືນັ້ນແປໃນທັນທີ
ແມ່ນສຳຄັນຫລາຍ. ທ່ານອາດຈະຈຳເປັນຕ້ອງ
ຕອບມັນໃຫ້ທັນໃນວັນທີສະເພາະໃດໜຶ່ງ ເພື່ອປົກປ້ອງສິດທິຂອງທ່ານ.

這份通知包含了有關本通知第一頁中所指上訴的重要資訊。因此立即請人翻譯相關內容是非常重要的。您或許必須在某個時間之前提出答辯狀以保護您的權利。

이 통지서에는 본 통지서 첫 페이지에 나오는 항소에 관한 중요한 정보가 들어 있습니다. 이것이 즉시 번역되도록 하는 것은 중요합니다. 귀하는 귀하의 권리를 보호하기 위하여 특정 날짜까지 응답해야 할 수도 있습니다.

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