

**STATE OF CONNECTICUT
Department of Labor
200 Folly Brook Boulevard
Wethersfield, CT 06109**

Complainant

Nancy Custin
By: Robert E. Savage, Esq.
156 Airport Road
Warwick, RI 02889

Employer

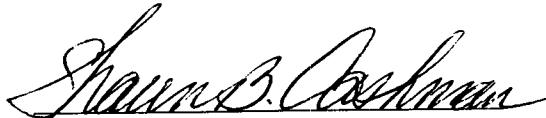
Boise Cascade
By: H. Know McMillan, Esq.
Boise Cascade Legal Department
111 W. Jefferson Street
P.O. Box 50
Boise, Idaho 83728-0001

Certified No.: 7000 1530 0000 9433 2614 Certified No.: 7000 1530 0000 9433 2607

Case No.: FM 97-3

Date Mailed: August 16, 2001

Pursuant to Section 31-1-8 of the Regulations of Connecticut State Agencies, I am issuing my final decision in the above-referenced matter after reviewing the evidence in the case. I affirm in whole and incorporate the Proposed Decision of the hearing officer issued on July 9, 2001 as my final decision in this matter, a copy of which is attached hereto.



Shaun B. Cashman
Commissioner

cc: Attorney Heidi Lane
Office of Program Policy

FAMILY MEDICAL LEAVE

COMPLAINT FM 97-3

Complainant:

Nancy Custin
32 Parker Avenue
Newport, RI 02840

Respondent:

Boise Cascade Office Prod.
50 Rado Drive
Naugatuck, CT 06770

Complainant Attorney:

Robert E. Savage
156 Airport Road
Warwick, RI 02889

Respondent's Attorney:

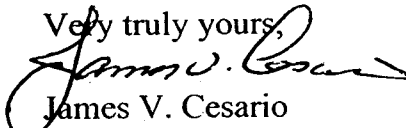
H. Knox McMillan
Boise Cascade Corp.
Legal Department
111 W. Jefferson Street
P. O. Box 50
Boise, MD 83728-001

Dear Parties:

Attached please find my proposed decision in the above captioned matter, sent by certified mail on July 9, 2001.

Pursuant to Connecticut General Statutes 4-179 and Connecticut Agencies Regulations 31-1-7, you have the right to file exceptions, present briefs, and to request oral argument before the Connecticut Labor Commissioner issues a final decision in this matter.

If the Commissioner does not hear from you, in writing, by July 31, 2001, he will, in all likelihood, proceed to render his final decision without further proceedings or the filing of briefs.

Very truly yours,

James V. Cesario
Hearing Officer

Attached: Proposed Decision

cc Shaun Cashman, Labor Commissioner
Attorney Heidi Lane, Office of Program Policy
Gary Peschie, Dir. of Wages & Workplace Standards

PROPOSED DECISION OF HEARING OFFICER

IN THE MATTER OF NANCY CUSTIN V. BOISE CASCADE CORP.
CASE NO: FM 97-3

DATE MAILED:

HEARING DATE: May 22, 2001

LOCATION: Hamden, Conn.

HEARING OFFICER: James V. Cesario

APPEARANCES:

For the Complainant: Herself (by telephone)
 Attorney Robert E. Savage (by telephone)

For the Respondent: Susan Ghattas, Witness (by telephone)
 Attorney H. Knox McMillan (by telephone)

For the Division of Workplace Standards: (None)

CASE HISTORY

On February 3, 2001, the Wage and Workplace Standards Division of the Connecticut Department of Labor, hereinafter referred to as the Division, received a complaint from Ms. Nancy Custin, hereinafter referred to as the Complainant, which alleged that her former employer, Boise Cascade corp., hereinafter referred to as the Respondent, was guilty of violating provisions of the Connecticut Family and Medical Leave Act.

On February 4, 2001, the Wage and Workplace Standards Division notified the employer, Boise Cascade Corp., of the complaint.

On March 5, 1997, the Respondent notified the Division that it denied violating the cited provisions of the Connecticut General Statutes and would contest all claims for relief or consideration sought by the Complainant.

Proposed Decision of Hearing Officer

Re: Nancy Custin

Page 2

On January 22, 1999, the Director of the Wage and Workplace Standards Division notified the Complainant that the Division lacked jurisdiction to investigate her complaint. The Division determined that Boise Cascade Corp., as of October 1, 1995, and thereafter, employed less than 75 individuals at facilities located in the State of Connecticut and was exempt from the provisions of Connecticut's Family and Medical Leave Act.

On February 9, 1999, the Complainant requested a hearing before the Connecticut Labor Commissioner pursuant to the provisions of Section 31-51ee-4(c) of the Regulations of Connecticut State Agencies.

On April 14, 2000, James P. Butler, Labor Commissioner for the State of Connecticut, designated the undersigned Associate Employment Security Appeals Referee as his Representative Hearing Officer in this matter.

The undersigned Hearing Officer heard the complaint on May 22, 2001. All parties appeared and offered testimony by telephone per prior arrangement and without objection from the Complainant or Respondent.

FINDINGS OF FACT

1. The Respondent has maintained a merchandise sales office in the town of Naugatuck, Connecticut for at least the past ten years. This is the only business facility owned or operated by Boise Cascade Corp. or any of its business subsidiaries within the geographic confines of the State of Connecticut.
2. As of April 22, 1999, the Complainant worked for the Respondent on a full-time basis splitting her work time between the employer's offices in Naugatuck, Connecticut and another sales office located in Mansfield, Massachusetts.
3. The Complainant began an authorized leave of absence from the Respondent's employment as of April 22, 1996, doing so pursuant to the provisions of the Connecticut Family and Medical Leave Act.
4. The Complainant's approved FMLA leave of absence expired as of July 15, 1996. At that time, officials of Boise Cascade Corp. insisted that the Complainant return to duty exclusively at the employer's Naugatuck, Connecticut sales office. The Complainant refused to do so.

Proposed Decision of Hearing Officer

Re: Nancy Custin

Page 3

5. On July 24, 1996, the Respondent first notified the Complainant that the Respondent was taking disciplinary action against her because of her continued unwillingness to work at the Naugatuck office. The Respondent ultimately discharged the Complainant for not complying with her supervisor's demands on August 2, 1996.
6. Boise Cascade Corp. employed no more than 60 individuals at the company's Naugatuck, Connecticut sales office between April 1, 1995, and April 1, 1996.
7. The Respondent does, however, collectively employ more than 75 individuals at its corporate headquarters in Boise, Idaho and at several company subsidiary offices located throughout the United States.

ISSUE

Is the Respondent employer, Boise Cascade Corp., subject to the provisions of the Connecticut Family and Medical Leave Act?

PROVISIONS OF LAW

Section 31-51qq-1 (I) of the Regulations of Connecticut State Agencies provides that for purposes of the regulations, as an "employer," within the meaning of the Connecticut Family and Medical Leave Act, is defined as a "person engaged in any activity, enterprise, or business who employs seventy-five (75) or more employees."

ANALYSIS AND CONCLUSION OF LAW

Documentary evidence, supported by credible and unrefuted testimony, demonstrates that the Respondent employer never employed 75 or more employees at any facilities located in the State of Connecticut, either on October, 1995, or at any other time proximate to the incident which prompted the Complainant's complaint, under provisions of the Connecticut Family and Medical Leave Act.

Accordingly, I conclude that the Respondent is exempt from the provisions of the subject legislation and that the Complainant is not entitled to the relief or consideration she seeks in this matter.

Proposed Decision of Hearing Officer

Re: Nancy Custin

Page 4

The Complainant contends that, in determining whether a given employer doing business in Connecticut employs 75 or more individuals, one must consider the number of workers the company employs at duty stations located within 75 miles of the individual Complainant's assigned duty station. The Complainant argues that Connecticut's political boundaries should not be considered in deciding this matter. However, the language of the Connecticut Family and Medical Leave Act does not support this interpretation of the term "employer."

Secondly, the Complainant argues that the regulation at issue should be interpreted to provide that any business enterprise which collectively employs 75 or more workers at all locations within the and without Connecticut and conducts business in the State of Connecticut should be bound by the provisions of the Connecticut Family and Medical Leave Act. Such an interpretation of Connecticut FMLA Regulation would be both unreasonable and illogical.

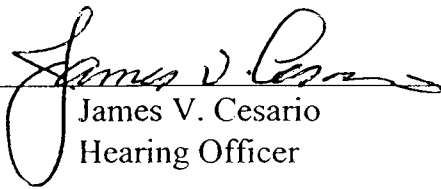
The Connecticut Legislature enacted the Connecticut Family and Medical Leave Act intending to provide rights and benefits to individuals in the employ of certain Connecticut business enterprises. The Act subjects designated Connecticut business enterprises to codified regulations and restrictions in their ongoing relationship with their workforce. On the other hand, the plain language of the Act limits the scope and coverage of the enacted legislation and exempts other Connecticut employers from the FMLA requirements. Accordingly, I conclude that by limiting coverage to business enterprises employing 75 or more individuals, the Connecticut Legislation effectively subjected only employers which employ 75 or more workers in Connecticut to the requirements and restrictions of the Act.

Indeed, to cite a hypothetical example: If Mr. Savage's interpretation of the subject regulation were to be adopted, a business enterprise with one solitary employee working in the State of Connecticut and 74 others work in Boise, Idaho, would be bound by the Connecticut FMLA legislation. It is unreasonable to believe that the Connecticut Legislature intended this when restricting the Connecticut FMLA to business enterprises which employ 75 or more individuals. When two interpretations of given legislation are possible and one is logical and the other is not, deference must be given to the more rational analysis. Kron v. Thelin Executrix, 40 Conn. Law Journal No. 52, p. 38, 39.

Proposed Decision of Hearing Officer
Re: Nancy Custin
Page 5

DISPOSITION AND ORDER

It is my recommendation that the Labor Commissioner of the State of Connecticut **dismiss** the Complainant's petition for lack of jurisdiction.


James V. Cesario
Hearing Officer