



DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 436-BH-82

DATE: April 16, 1982

APPEAL NO.: 259960

S. S. NO.:

CLAIMANT: Walter C. Twyman

EMPLOYER: Howard W. Clark, Inc.

L. O NO.: 43

APPELLANT: REMAND FROM COURT
REOPENED CASE
CLAIMANT APPEAL

ISSUE Whether the Claimant failed to file a timely and valid appeal, without good cause, within the meaning of Section 7(c) (ii) of the Law; and whether the Claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

May 16, 1982

-APPEARANCES -

FOR THE CLAIMANT:

Walter C. Twyman - Claimant
Doris Walker - Legal Aid Bureau, Inc.

FOR THE EMPLOYER:

Not Represented

INTRODUCTION

Upon a joint motion to remand, this case was remanded by the Court of Special Appeals of Maryland to the Board of Appeals for a determination of the merits of the Claimant's appeal of the initial determination disqualifying him from unemployment benefits.

The issue of whether the Claimant failed, without good cause, to file a timely and valid appeal within the meaning of Section 7(c) (ii) of the Law has been decided in favor of the Claimant since the Claimant had notified the agency of his change of address prior to the Claimant's receipt of his non-monetary determination, which was sent to an incorrect address. Therefore, that issue need not be further addressed in this decision.

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was employed by Howard W. Clark, Inc., delivering appliances, from 1963 until he was terminated on August 1, 1979. The Claimant was fired because he missed time from work. The majority of his absences were due to his alcoholism and related personal problems, including being evicted from his apartment.

Susequent to his leaving that employment, the Claimant was hospitalized for treatment of his alcoholism and is still under therapy and attends an AA program.

CONCLUSIONS OF LAW

The Board concludes that the Claimant was terminated for misconduct connected with his work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Although the testimony of both the Employer and the Claimant was rather vague concerning the circumstances of the Claimant's separation, the Board does not find that the Claimant had the requisite intent to quit his job, within the meaning of Section 6(a) of the Law, see Allen v Core Target City Youth Program, 275 MD 69 (1975). Although the employer could not say he had fired him, he did admit that he considered the Claimant fired.

The Board does not find sufficient evidence that the Claimant's actions constituted gross misconduct within the meaning of Section 6(b) of the Law.

DECISION

The Claimant filed a valid and timely appeal within the meaning of Section 7(c) (ii) of the Law.

The Claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning July 29, 1979 and the nine weeks immediately following.

The decision of the Appeals Referee is reversed.



Associate Member



Associate Member

W:D
Zvs

DATE OF HEARING: March 2, 1982.

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Doris Green Walker, Esquire

Cornelius Sybert, Jr., Esquire

UNEMPLOYMENT INSURANCE - WHEATON



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BOARD OF APPEALS

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 Chairman

HENRY G. SPECTOR
 HAZEL A. WARNICK
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

GARY SMITH
 Chief Hearings Officer

- DECISION -

CLAIMANT: Walter C. Twyman
 EMPLOYER: Howard W. Clark, Inc.
 DATE: April 8, 1980
 APPEAL NO.: 259960
 S.S. NO.:
 L.O. NO.: 43
 APPELLANT: Claimant

ISSUE: Whether the claimant filed a valid and timely appeal within the meaning of Section 7(e) of the Law.
 Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYED SECURITY OFFICE. OR WITH THE APPEALS DIVISION, ROOM 511, 1100 NORTH EUTAW STREET, Baltimore, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON April 27, 1980

-APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Walter C. Twyman - Claimant

Represented by Thomas
 G. Clark - General
 Manager

FINDING OF FACT

The determination of the Claims Examiner disqualified the claimant because he found that the claimant had left his job with Howard W. Clark, Inc. voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. This determination was mailed to the claimant at his then current address on December 20, 1979. The determination plainly cautioned the claimant that the last date to file his

appeal was January 4, 1980. The claimant filed his appeal in person at the Local Office on February 8, 1980. His reason for not filing his appeal sooner was that he was in the Recreation Center for Alcoholics and thus was **not** home when the claimant's determination arrived.

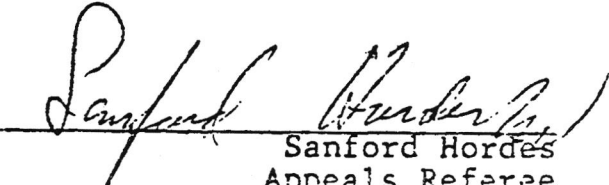
COMMENTS

It is concluded from the evidence that the claimant did not file a timely and valid appeal within the meaning of Section 7(e) of the Maryland Unemployment Insurance Law. Although the claimant was given adequate notice that the last date to file his appeal was January 4, 1980, he did not file his appeal until February 8, 1980, more than four weeks "after the statutory fifteen-day appeal period had expired. Accordingly, this Appeals Referee does not have any authority to consider or to decide the merits of the claimant's appeal.

DECISION

The claimant did not file a timely appeal.

The determination of the Claims Examiner to disqualify the claimant because he left work voluntarily, without good cause, attributable to the employer stands. The denial of benefits for the week of July 29, 1979 and until such time that he becomes re-employed and earns at least ten times his weekly benefit amount (\$1,060.000 and thereafter becomes unemployed through no fault of his own, remains in effect.


Sanford Hordes
Appeals Referee

Date of hearing: 3/13/80
amp/9710
(Blythe)
1082-A

Copies mailed to:

- Claimant
- Employer
- Unemployment insurance - Wheaton