



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.: 1031-BR-91

Date: August 22, 1991

Claimant: John E. Hill, Sr.

Appeal No.: 9108643

S. S. No.:

Employer: BPS Guard Service, Inc.
c/o R. E. Barrington, Inc.

L. O. No.: 21

Appellant: CLAIMANT

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law; whether the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) 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 CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

September 21, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant alone testified at the hearing. In his decision, the Hearing Examiner did not make any finding that the claimant's testimony lacked credibility. The claimant did testify, as the Hearing Examiner found, that the claimant cleaned out his locker. The Hearing Examiner inferred from that fact that the claimant was exhibiting the intention to quit. But the claimant's direct testimony was that he cleaned out his locker after he had already been told that he was laid off. Since the Hearing Examiner did not make an adverse finding on the claimant's credibility, this testimony should be reflected in the findings of fact. Once this testimony is reflected in the findings of fact, the case takes on a different complexion.

The claimant, who had worked for almost two years at the 4:00 p.m. to 11:00 p.m. shift, began taking a school course which was not over until 2:30 p.m. every day. It was extremely difficult for him to make it to work by 4:00 p.m. The employer was anticipating layoffs. The claimant suggested to the employer that his hours be cut, and his starting time be set at 5:00 or 5:30 p.m.

No official response was received by the employer. When the claimant came to work (on time) on a Thursday, he noticed that his name had been taken off the schedule for the following week. When the claimant asked about this, he was told that he was laid off, effective Monday. During his work time on Thursday, the claimant began cleaning out his locker. At this time, he was confronted by security personnel and told to leave the premises. He was then denied further access to the premises.

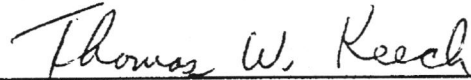
The sequence of events alleged by the employer in its written documents may be more plausible, but there was no live testimony presented that the employer's version was true. The sequence of events testified to by the claimant (and found as a fact by the Board) shows a discharge, but not for any misconduct, connected with the work. A suggestion that one's hours be changed is certainly not misconduct. Neither is a lack of work. Under the circumstances, the decision of the Hearing Examiner will be reversed.

DECISION

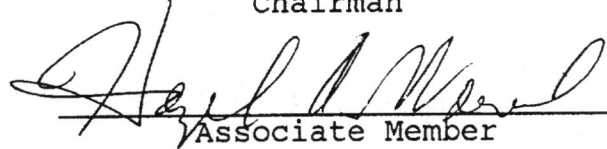
The claimant was discharged, but not for any misconduct within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from employment with BPS Guard Service, Inc.

The decision of the Hearing Examiner is reversed.

The local office may wish to determine if the claimant is meeting the requirements of Section 4(c) of the law, in light of the hours of his school attendance.



Chairman



Associate Member

K:HW

kbm

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - LEONARDTOWN

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

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|-----------|---|-------------|------------------|
| Claimant: | John E. Hill | Date: | Mailed: 06/28/91 |
| | | Appeal No.: | 9108643 |
| | | S. S. No.: | ----- |
| Employer: | B P S Guard Service, Inc. c/o R. E. Barrington, Inc. | L.O. No.: | 021 |
| | | Appellant: | CLAIMANT |

Issue: Whether the unemployment of the claimant 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 REQUESTED A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 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 **July 15, 1991**

— APPEARANCES —

FOR THE CLAIMANT:

John E. Hill - Present

FOR THE EMPLOYER:

Not Present or
Represented

FINDINGS OF FACT

The claimant was employed as a security guard at the Calvert Cliff Plant of the Baltimore Gas & Electric Company. He worked there for B P S Guard Services, Inc. The claimant began working there approximately two years before his separation from

employment on April 4, 1991. The claimant began attending school at Lincoln Technical School on Central Avenue in Maryland on April 17, 1991. After he began attending school, he informed his employer that he could no longer work the hours he had been scheduled. The claimant had been working from 4:00 p.m. to 12:00 midnight. He attended school from 8:00 a.m. to 2:30 p.m. then drive home, clean himself up and then have to go to work and he felt he could not make it by 4:00 p.m. After he told the employer that he could not work those hours, he came to the work place, went to his locker, cleaned it out and while he was cleaning it out was approached by the security people at the plant, that is those who worked for Calvert Cliff Installation and not for his employer and was escorted from the premises.

The claimant made no attempt after the events that led to him being escorted from the premises at Calvert Cliffs to work other shifts for the employer and the employer did not offer him any other shifts.

The claimant attends school from 8:00 a.m. to 2:30 p.m. each day and says that if he obtains work that requires him to work these hours, he can change his schooling hours to 5:30 to 11:30 in the evening.

CONCLUSIONS OF LAW

Based upon all the evidence and the reasonable inferences to be drawn therefrom, it is determined that the claimant voluntarily quit his employment with the employer in this case because he was attending school. The claimant had been working for the employer for two years and made no attempt to change his working hours with respect to working the 4:00 to 12:00 shift until he began school in April. Thereafter he approached his employer and told him he could no longer work those hours and went and cleaned out his locker showing an intention to quit his job at that time.

DECISION

The claimant voluntarily left his employment, without a good cause connected with his work, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving unemployment insurance benefits for the week beginning March 31, 1991 until he becomes re-employed and earns at least ten times his weekly benefit amount (\$1,970.00).

The determination of the Claims Examiner is affirmed.



Martin A. Ferris
Hearing Examiner

Date of Hearing: June 20, 1991
ke/Specialist ID:
Cassette No: 6220
Copies mailed on June 20, 1991 to:

Claimant
Employer
Unemployment Insurance - Leonardtown (MABS)