



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS

**1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

383 - 5032

-DECISION-

THOMAS W. KEECH
Chairman

**HAZEL A. WARNICK
MAURICE E. DILL**
Associate Members

SEVERN E. LANIER
Appeals Counsel

**STATE OF MARYLAND
HARRY HUGHES**
Governor

CLAIMANT: Darryl B. Drayton
EMPLOYER: Perdue, Inc .
ATTN: Robert W. Slone, Mgr.

DECISION NO.: 104-BR-84
DATE: January 24, 1984
APPEAL NO.: 09366 G 09367
S.S. NO.:
L.O. NO.: 12
APPELLANT: CLAIMANT

ISSUE: Whether the Claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of § 6(a) of the Law; and whether the Claimant was able to work. available for work, and actively seeking work, within the meaning of

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT 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

February 23, 1984

-APPEARANCE-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the decision of the Appeals Referee with regard to § 4(c) but reverses the decision with regard to § 6(a) .

The Claimant's testimony, unrefuted by the employer, is that he did not quit his job, but was fired after punching out early because of a job related medical problem with his hands. The Board notes that the Claimant originally told the Agency that he had quit his job. However, at the hearing before the Appeals Referee, the Claimant gave credible testimony regarding his separation and why he had first said he quit. The witness for the employer could not refute the Claimant's testimony.

Therefore, the Board finds that the Claimant was discharged due to his inability to continue working on July 1, 1983, that this inability was directly caused by the effect of his job on his hands, and that this does not constitute misconduct or gross misconduct within the meaning of §§ 6(c) or 6(b) of the Law.

DECISION

The Claimant did not voluntarily quit his job without good cause, within the meaning of § 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on that section of the Law.

The Claimant was discharged, but not for misconduct or gross misconduct, connected with the work, within the meaning of §§ 6(c) and 6(b) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from his employment with Perdue, Inc. The Claimant may contact the local office concerning the other eligibility requirements of the Law.

The Claimant is not able to work and available for work within the meaning of § 4(c) of the Maryland Unemployment Insurance Law. Benefits are denied from July 3, 1983 to August 25, 1983 or the date of his incarceration in the Wicomico County Jail, whichever is earlier, unless the Claimant submits competent medical certification establishing his release for work without restrictions.

The decision of the Appeals Referee as to § 6(a) of the Law is reversed; the decision as to § 4(c) of the Law is affirmed.



Associate Member



Associate Member

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - SALISBURY



STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS
 THOMAS W. KEECH
 Chairman
 MAURICE E. DILL
 HAZEL A. WARNICK
 Associate Members
 EVERN E. LANIER
 Appeals Counsel
 MARK R. WOLF
 Administrative
 Hearings Examiner

- DECISION -

CLAIMANT: Darryl B. Drayton
 DATE: Sept. 23, 1983
 APPEAL NO.: 09366 & 09367
 S. S. NO.:
 EMPLOYER: Perdue, Incorporated
 L. O. NO.: 12
 APPELLANT: Claimant

ISSUE:
 Whether the claimant "was able and available for work and actively seeking work within the meaning of Section 4(c) of the Law.
 Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON October 10, 1983

-APPEARANCES-

FOR THE CLAIMANT:

Darryl B. Drayton, Present

FOR THE EMPLOYER:

Robert W. Slone,
 Manager Employee
 Relations;

Other: Employment Security
 Administration-
 Charles Boyer,
 Unemployment Insurance
 Supervisor

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Salisbury, effective April 10, 1983.

The claimant last worked for Perdue, Inc., for a period of three weeks, hanging live chickens, at a pay rate of \$5.05 per hour.

The claimant had a prior work history with Perdue, Inc.. having been in the same occupation at Perdue, hanging live chickens, in 1975. At that time, the claimant left the job because of disability to the knuckles, or hands as a result of the bones hitting the shackles while hanging the chickens. However, more recently after being terminated by Perdue Farm, the claimant reapplied to Perdue Receiving Plant for a job hanging chickens as he had done in 1975. After three weeks on the job, the claimant was unable to tolerate the pain as the result of the swelling of the finger joints and knuckles became raw from hitting the shackles as the chickens were hanged. Although the company issued gloves to the employees, the claimant found that this did not prevent the soreness, or the hands would sweat considerably when covered by rubber gloves. At times this caused the skin to turn white.

On July 1, 1983, the claimant visited the company nurse concerning the swelling and pain to his knuckles. The nurse applied a bandage wrap which did not help. The claimant had reported to work that day at 3:30 p.m. the beginning of a shift. At 7:30 p.m., the claimant notified his supervisor that he could no longer take the pain and that he was leaving. Although the claimant was ordered back to the line, he proceeded to punch out. When the claimant later called the plant, the supervisor told him that he no longer had a job.

After his separation from Perdue Inc., the claimant began to look for other work which he could do, such as laboring with a bottling company or restaurant work. Although the claimant was requested to present medical certification as to his ability to work, and in view of prior surgery to his hand, no such certification has yet been received.

CONCLUSIONS OF LAW

The claimant reapplied and was rehired for work which he had previously performed at Perdue, Inc., and which job he had left due to a disability to the hand, attributable to the conditions of employment. Although the claimant knew that the job would probably affect his fingers and hands as it had in the past, he nonetheless accepted it with this knowledge. Therefore, when the claimant left the job in the middle of the shift, without permission, he did so knowingly and voluntarily, and for a cause not directly attributable to the actions of the employer. Therefore, it is concluded that the claimant left his job voluntarily, without good cause, within the meaning of the Law.

But, the claimant has advanced valid circumstances" for a substantial cause attributable to the conditions of employment, or where he had necessitous and compelling reasons to leave the job, and had no reasonable alternative but to do so. Accordingly, the minimum disqualification as permitted by Statute will be imposed.

With respect to the claimant's continuing eligibility for benefits after his separation from Perdue, it is concluded that if the claimant can provide appropriate medical certification from his physician which establishes that he has been able and available for work without restrictions. benefits may be allowed from July 3, 1983 to the date of his incarceration in the Wicomico County Jail, subject to the disqualification herewith being imposed as a result of separation from employment.

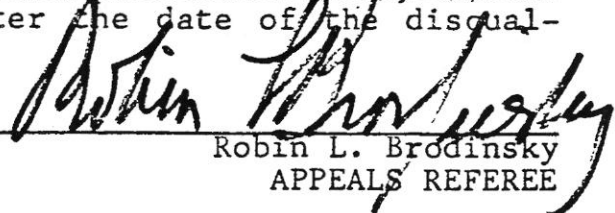
DECISION

It is held that the claimant's unemployment was due to leaving work voluntarily, without good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning June 26, 1983, and the four weeks immediately following.

It is held that the claimant has not established that he is able and available for work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. Benefits are denied from July 3, 1983 to August 25, 1983 or the date of his incarceration in the Wicomico County Jail, whichever is earlier, unless the claimant submits competent medical certification to the Claims Examiner establishing his release for work without restrictions.

The determinations of the Claims Examiner are affirmed and modified accordingly.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits, and Federal Supplemental Insurance benefits (FSC), unless the claimant has been employed after the date of the disqualification.


Robin L. Brodinsky
APPEALS REFEREE

Date of hearing: September 14, 1983!

Cassette: 6500

hf (Peterson)

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Employer
Unemployment Insurance-Salisbury