

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
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*Baltimore, Maryland 21201*  
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*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

Decision No.:	1280-BR-91
Date:	October 18, 1991
Claimant: Gwen Bartholow	Appeal No.: 9107548
	S. S. No.:
Employer: Reisterstown Twin Kiss	L O. No.: 15
	Appellant CLAIMANT

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.

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— 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 November 17, 1991

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— 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 Hearing Examiner's findings of fact in the present decision are equivocal. The claimant's allegations in this case are that the employer fondled her and attempted to kiss her, then offered her a kiss in lieu of a paycheck, then subsequently criticized her sharply and unfairly about her motivation for staying on the job. No definite findings of fact are made on any of these issues, though the conclusions of law do imply that the Hearing Examiner found that the claimant had not proven most of these allegations. At the same time, the following conclusions of law were made:

However, regarding the record as a whole there is reasonably sufficient evidence in the record to establish that at least some measure of suggestive statements were made which caused concern and possibly embarrassment to the claimant.

This is an insufficient finding of fact, in light of the claimant's specific allegations, and the lack of specific findings on those allegations. It is unclear what "some measure of suggestive statements" means.

Based on its own review of the entire record, the Board makes the following findings of fact. The claimant was employed for about five years in this establishment, though it came under different ownership during her employment. On March 22, 1991, one of the owners of the business fondled the claimant's breast and attempted to kiss her; then, after being rejected, he offered her a kiss in lieu of a paycheck. When the claimant said that she preferred the paycheck, he threw the paycheck at her. A few days later, this owner began verbally harassing the claimant, stating repeatedly that she didn't like her job and only worked for her check. The claimant became upset and quit.

Based on these findings of fact, the Board concludes that the claimant had good cause for leaving the employment. The claimant was sexually fondled, then sexually harassed by one who was in a position to make her employment miserable if she did not consent. When she did not consent, this owner then set out on a deliberate course to make her life miserable by repeatedly accusing her (wrongly) of having a bad attitude. This type of harassment is clearly "good cause," as that term is used in Section 8-1001 of the law.

#### DECISION

The claimant left work voluntarily, but for good cause, within the meaning of Section 8-1001 of the Labor and Employment Article. No disqualification of benefits is imposed based on her separation from employment with Reisterstown Twin Kiss.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech  
Chairman  
Steph A. Warrick  
Associate Member

K:HW

kbm

COPIES MAILED TO:


CLAIMANT

EMPLOYER

Ernest John Weiss, Jr., Esq.

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UNEMPLOYMENT INSURANCE - WESTMINSTER

 **Maryland**  
Department of Economic &  
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— D E C I S I O N —

Claimant:	Gwen E. Bartholow	Date:	Mailed: 07/24/91
		Appeal No.:	9107548
		S. S. No.:	
Employer:	Reisterston Twin Kiss	L. O. No.:	15
		Appellant:	Employer

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 OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON August 8, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant - Present  
Ernest J. Weiss, Jr. Esq.

FOR THE EMPLOYER:

Represented by:  
Samuel BliBaum,  
Esq.;  
Pam Goldstein,  
Subpoenaed Witness;  
Officer J. H. Ensor,  
Baltimore County  
Dept.; Nicholas  
Mamaus, Manager;  
Socrates Mamaus,

Manager; Dimitros  
Kokotis; Evelyn  
Christianson,  
Employees

#### FINDINGS OF FACT

The claimant began employment for the predecessor in title on August 3, 1986 and continued performing services for the employer of record from February 29, 1991 until March 27, 1991 when she was separated through resignation. The nature of the services performed was in food preparation and cashier work in a restaurant environment.

The claimant resigned from the employment alleging that she had been sexually harassed and intimidated by Nicholas Mamalis, a co-manager of the employer of record. The first alleged event occurred on March 22, 1991 at about 1:30 p.m. and a police incident report (claimant's exhibit #2) reveals that the claimant reported the manager to have pushed her against the wall, fondled her breast and attempted to kiss her. The claimant resisted and left the manager's office but, in the words of the police report, "advised that she went back into the office due to the fact that she thought that the suspect wanted to talk to her."

The second event is alleged to have occurred later in the same day at about 5:00 p.m. as the claimant was leaving. She went to the manager's office to get her paycheck and recalls that Nicholas Mamalis asked her if she wanted her check or a kiss and when she declined the kiss he threw the check at her. The claimant's recollection of the subsequent events is that the employer was "real mean and nasty" and complained about her ability to do her work.

The claimant determined to leave the employment and did so prior to the close of her shift on March 27, 1991.

The claimant presented the testimony of another employee of three years duration, Pam Goldstein, who offered testimony of "sexual innuendo" made to her and ostensibly for which she resigned. However, that witness was rehired after four days and in response to an inquiry about current employment conditions responds that "everything is great."

The police report relates an interview with another former

employee who stated that she resigned because of sexual harassment and indecent proposition made to her by Nickolas Mamalis. However, this witness is not presented in person at the hearing.

To the question as to why the claimant did not resign immediately after the two events of March 22, 1991, the claimant responds that she had another payment to make on her vehicle.

The record in this case states that the new owners did not operate the food service operation in the same fashion and style as the former proprietor, but prepared food according to a franchise formula to which the claimant and other employees had some difficulty in adapting. Also, the evidence offers some reason to believe that employees, of which the claimant was the highest paid, were expected to work harder than they did for the previous owner.

#### CONCLUSIONS OF LAW

The record in this case discloses the take over a food service operation by the employer of record with new managers of ostensibly different demeanor and manner than the former proprietors. Added to this situation was the institution of a new food preparation system and expectation of greater productivity from employees.

There is some evidence in this case of remarks or overtures to female employees by Nicholas Mamalis, a co-manager which caused apprehension. Whether these matters rise beyond mere indiscretion and into the realm of actionable sexual harassment is not really the issue in this case which must be decided under Section 6(a) of the Law. The issue to be decided here is whether there existed "good cause" or "valid circumstances" to support the claimant's resignation.

As is usual in such cases, there is an accusation, a denial and no direct corroborative evidence. In "voluntary quit" cases, the burden of proof lies with the claimant and to gauge how well that burden is met in the instant case, we must look to the quality and persuasiveness of the supportive evidence offered by the claimant.

The two events of March 22, 1991 were apparently not of significant impact to the claimant to encourage her to leave the employment immediately, or even to discuss the matter with her parents and boyfriend until the March 26, 1991. (See claimant's

exhibit #1) While the claimant's testimony suggests that she was very shaken by the events of March 22, 1991, she continued working until March 27, 1991, at which time her concern appears to have been primarily over criticism of her work.

Testimony offered by the claimant's witness, Pam Goldstein, is largely inconclusive. The witness testifies that comments of sexual innuendo were present in the work place and asserts that it was a factor in her resignation. Yet, four days later the witness returned to the same work environment and states "everything is great." Further insight into the work place environment may well have been produced by an employee of three days' tenure, Mary Tubens, who now appears to reside in South Carolina. However, this witness, which may have been the most damaging to the employer's credibility, was not produced either in person or through affidavit. Also, the question of this former employee's leaving the employment and subsequent relocation is unaddressed and the question of any connection between the relocation and the resignation is unresolved.

Another factor in the case is that despite claimant's displeasure at the event of March 22, 1991 at 1:30 p.m., according to the Police report, (claimant's exhibit #2) she "went back into the office due to the fact that she thought the suspect wanted to talk to her." However, regarding the record as a whole there is reasonably sufficient evidence in the record to establish that at least some measure of suggestive statements were made which caused concern and possible embarrassment to the claimant. On this basis, it shall be held that the claimant's resignation, while without the requisite "good cause" was for "valid circumstances" within the meaning of Section 6(a) of the Law.

#### DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law. She is disqualified from receiving benefits from the week beginning March 24, 1991 and for the four the weeks immediately following.

The determination of the Claims Examiner is reversed.



Louis Wm. Steinwedel  
Acting Chief Hearing  
Examiner

Date of Hearing: 6/20/91  
ec/Specialist ID: 15702  
Cassette No: 5185  
Copies mailed on 07/24/91 to:

Claimant  
Employer  
Unemployment Insurance - Westminster (MABS)

Ernest John Weiss, Jr.

Samuel Blibaum