



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.:	1299-BR-91
	Date:	October 22, 1991
Claimant: John E. Marshall, Jr.	Appeal No.:	9110874
	S. S. No.:	.
Employer: Center Insurance Agency, Inc.	L O. No.:	7
	Appellant:	CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.	

— 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 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 findings of fact of the Hearing Examiner are somewhat unclear. The Hearing Examiner concluded that the claimant "did not attempt to discuss this matter with his employer," but the Hearing Examiner found as a fact that the claimant "had a couple of conversations with his employers discussing the Saturday morning absences." These findings appear to be contradictory and can only be reconciled if one takes the position that all discussions that took place were of a routine nature only and did not rise to the level of an actual discussion of the claimant's religious obligations. The Board, however, concludes that these repeated discussions between the claimant and his employer about his missing time from work on Saturdays due to his religious obligations were, in fact, discussions of that very issue. The Board does not view this as a case where there was a lack of communication between the employer and the employee. There were recurrent conversations about this very issue throughout the last several weeks of employment. The real issues are substantive, i.e., whether the claimant left because the conditions of employment violated his religious beliefs, or whether the claimant left because the employer violated its agreement made with him at the time he was hired.

There was very little conflict between the testimony of the claimant and that of the employer. The employer stated that his story was "completely different from" the claimant's, but the Board perceives these stories to be virtually the same. Some of the employer's testimony was puzzling to the Board. For example, he repeatedly stated that he never discussed anything about this issue with the claimant, but he also recited, word for word, discussions which he had with the claimant about this issue. The Board has concluded that this apparent contradiction resulted from an unusual interpretation of the word "discussion." Aside from this difference in interpretation, the claimant's and the employer's stories are virtually identical.

The claimant is a Jehovah's Witness whose religion requires him to organize and perform at least a small amount of missionary door-to-door activity every Saturday. Prior to taking the job, the claimant made clear to the employer that he needed time off on Saturdays for this to be done. The employer agreed that the claimant could do this. Apparently, the claimant did this at first by doing his religious activities early, then coming to work late on Saturdays.

Much later in the employment, the employer requested that the claimant come to work early, leave work to engage in his religious activities, then return to work as soon as he could. The claimant complied. As a result, he left the employment approximately 9:30 a.m. on Saturdays and returned any time between 12:30 and 1:00 p.m.

On Saturday, March 23, the claimant was criticized by his employer for taking too much time for his religious activities. The claimant responded that he needed to do these activities. On the following Saturday, March 30, he was criticized for missing this time. On April 6, the next Saturday, the employer's president told the claimant that he was going to have to cut back the amount of time devoted to his religious activities. The claimant stated that he could not. He was told by the employer's president that he could not stay out as long as he had been staying out. On Saturday, April 14, the owner of the employer stated to the claimant, "It's not going to happen anymore." He was referring either to the claimant's taking time off at all on Saturdays, or to his taking as much time as he had been taking.

The owner then walked away from the claimant. The claimant interpreted the discussions with the president and the owner of the company as establishing that the employer was not going to allow him to continue to miss time on Saturdays for his religious activities. He then quit the employment for this reason. He did not give the employer any notice whatsoever. In every respect except the Saturday work, the claimant had been a good employee who had been promoted and had been given bonuses for his productive work.

CONCLUSIONS OF LAW

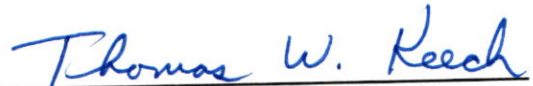
Based on the facts found above, the Board concludes that the claimant left his employment with good cause within the meaning of Section 8-1001 of the Labor and Employment Code. The claimant's interpretation of the employer's words was reasonable. Although neither the president nor the owner of the company spoke in terms of the claimant's religious obligations, they both made it clear to him that the employer was not going to allow him to continue to engage in his religious activities on Saturdays to the extent that he was already doing. This appears to have been in violation of the agreement the employer made with the claimant when he was first hired that he could do this. The Board does not need to rule on this issue, however, since the claimant left his employment because the conditions of employment violated his sincerely held religious principles. In the case of Thomas v. Review Board of Indiana, 450 U.S. 707, 101 S.Ct. 1425 (1981), the Supreme Court held that where the duties of employment conflict with a sincerely held religious belief, causing the employee to voluntarily quit the employment, no penalty may be imposed under an unemployment insurance law for voluntarily quitting. Even if there were no prior agreement by the employer to honor the specific religious commitment of the employee, the employee's sincere religious belief would

establish good cause for quitting. In this case, however, the employer specifically agreed to accommodate the claimant's religious schedule, then decided that it could not do so anymore.

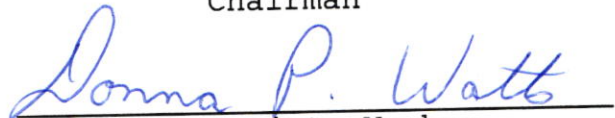
DECISION

The claimant voluntarily left his employment, but with good cause within the meaning of Section 8-1001 of the Labor and Employment Article. No disqualification is imposed based upon his separation from Center Insurance Agency, Inc. The claimant may contact his local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:DW

kbm

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

 **Maryland**
Department of Economic &
Employment Development

William Donald Schafer, 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 —

	Date:	Mailed: 07/24/91
Claimant: John E. Marshall, Jr.	Appeal No:	9110874
	S. S. No.:	
Employer: Center Insurance Agency, Inc.	C.O. No.:	07
	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 REQUEST 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

August 8, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Represented by:
Michael Jacobs,
President

FINDINGS OF FACT

The claimant worked for the employer from April 1, 1990 to April 13, 1991. He was employed as a manager and earned \$425.00 per week full-time. The claimant voluntarily quit his employment on

or about April 13, 1991 because a disagreement with his employer. The credible evidence indicated that when the claimant was hired in April 19, 1990 he informed his employer that he would need approximately one hour off every Saturday morning. The claimant has religious obligations which obligate him to organize a project each Saturday morning. The claimant would need an hour to an hour and a half on Saturday mornings away from his employment. As time went on, the claimant was taking additional time from work. In April, 1990, the claimant was training three and a half hours per Saturday morning. The president of the employer went to the claimant and asked him if he was going to continue to take such long absences on Saturday morning. The employer needed coverage on Saturdays. The claimant responded that he would do what he had to do. It was not the employer's intent to not to permit the claimant to fulfil his religious obligations. It was the intent of the employer to have coverage on Saturdays.

The employer stated that they were willing to have Saturdays off to fulfil his religious obligations. The claimant had a couple of conversations with his employer's discussing the Saturday morning absences. The claimant was insistent that he must have the time have the time off on Saturday morning. On April 13, 1991, the claimant was gone a considerable period time. The owner of the establishment came and stated that he needed the claimant present on Saturdays. The claimant became upset and did not report to work after Saturday April 13, 1991.

The claimant did not give the employer any notice of his intent to separate from employment. The employer had no idea why the claimant was separating from employment. The employer did not want to lose the claimant since he was a good employee. He was brought on as a mini scale salary and soon became manager and was earning a salary plus commission. The employer considered the claimant a good employee.

CONCLUSIONS OF LAW


Article 95A, Section 6(a) provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause or valid circumstances, within the meaning of Section 6(a) of the Law.

In the instant case, the claimant voluntarily quit his employment because of a disagreement. The claimant did not attempt to discuss this matter with his employer. The employer would have made alternative concession to the claimant to keep him in his employment. As a result of the above actions, the claimant voluntarily quit his employment, without good cause or valid circumstances, within the meaning of Section 6(a) of the Law.

DECISION

The claimant voluntarily left his employment, without good cause connected with the work, within the meaning of Section 6(a) of the Law. He is disqualified from receiving benefits for the week beginning April 14, 1991 and until the claimant becomes re-employed and earns at least ten times his weekly benefit amount of (\$2,150) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.


Kevin O'Neill
Hearing Examiner

Date of Hearing: 7/19/91
ec/Specialist ID: 50504
Cassette No: 7052(a)
Copies mailed on 07/24/91 to:

Claimant
Employer
Unemployment Insurance - College Park (MABS)