Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
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— DECISION —

Decision No.: 153-BR-89

March 2, 1989

Claimant: Cecile Tenney

Appeal No.: 8806861

S. S. No.:

Employer: Andrews Food Company Inc.

L O. No.: 9

Appellant: EMPLOYER

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 6(b) or 6(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 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 AT MIDNIGHT ON April 1, 1989

— APPEARANCES —

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 Hearing Examiner.

The Board apologizes for the delay in issuing a decision in this most interesting case.

The claimant was employed pursuant to a written, five-year contract with the employer, Andrews Food Company. The contract provided that the claimant was to perform services as a salesman but that the employer could change his duties. After about four years, the claimant's duties were changed from a salesman's duties to those of a consultant. He was paid according to the contract, but he was no longer engaged in sales or required to report to the office on a daily basis.

As the contractual period came to an end, the claimant arranged to have his health benefits extended under the COBRA program. He did not, however, even mention anything to his employer about extending the contract or continuing employment. He believed that the employer did not want him in the position any more. His testimony reflects his thought process at the time: "A contract is a contract. When it's over, it's over."

The employer also failed to broach the subject of the claimant continuing his employment. The employer, in fact, would not have continued the claimant in the exact same capacity and salary, as the employer believed that the claimant was earning too much as a consultant. He would have used him as a salesman, or possibly as a consultant at a lower rate. None of these thoughts, however, were communicated to the claimant.

The claimant's eligibility for benefits depends on whether the claimant voluntarily left employment within the meaning of Section 6(a) of the law. If he did so, he must prove that he had "good cause" or "valid circumstances" for doing so.

The Court of Appeals has ruled repeatedly that the statement of purpose in Section 2 of the law is not a substantive disqualification from the receipt of benefits. Employment Security Administration v. Browning-Ferris, 292 Md. 515, 438 A.2d 1356 (1982). In order for a person to be disqualified from benefits based upon the reason for his leaving the employment, a specific disqualification in Section 6 of the law must come into play. Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237, 241 (1975).

Section 6(a) of the law, dealing with voluntarily leaving the employment, applies only where a "claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment." Allen, supra, at 338 A.2d 243.

This is the only case in which the Board has had this precise situation presented. The Board concludes that the claimant did not voluntarily leave his job within the meaning of Section 6(a) of the law. He did not take any action to terminate the employment, since it terminated automatically. He believed that his employer was dissatisfied with his being in the position as consultant. More importantly, he was correct in this belief. The employer was actually not willing to continue the employment on the same terms and conditions, though he was willing to negotiate about other terms and conditions. Had the claimant asked to continue his exact employment, his request would have been denied. And the fact that the claimant didn't ask cannot, in these circumstances, be considered as an intentional termination of the employment.

This is not a case such as Cole v. Boys and Girls Homes of Montgomery County (595-BR-82), where a claimant refused to renew her employment contract and indicated that she intended to resign. In the Cole case, the claimant declined to sign a routine, pro forma extension of her employment contract. In the instant case, however, there was nothing routine about the contract, nor was there any expectation or permission on the part of the employer that it was to be extended.

Since the claimant did not voluntarily leave the employment, the burden is on the employer to show that his discharge was for misconduct or gross misconduct. No such misconduct was even alleged, and the Board must conclude that the claimant was discharged, but not for any misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No penalty will be applied, based on the reason for separation from this employment.[2]

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[1] The contention that the claimant quit his job effective in 1988 when he signed his five-year employment contract in 1983 is frivolous.

[2] The claimant also cannot be disqualified for failure to accept suitable work under Section 6(d) of the law. There was no evidence of any actual offer of work being communicated to the claimant. Even if there had been an offer, it was prior to the claim for benefits and could not have served as the basis of a 6(d) disqualification. Sinai Hospital v. Dept. of Employment and Training, 309 Md. 28, 522 A.2d 382 (1987). Refusal of such a specific offer contemporaneous with the ending of the contract by the present employer would have been considered by the Board as a quit under Section 6(a). Kramp v. Baltimore Gas & Electric CO. (1051-BR-82).

In addition, no offer of work sufficiently specific to invoke the terms of Section 6(d) of the law was made at the hearing itself.

DECISION

The claimant did not voluntarily quit his employment, He was terminated, but not for gross misconduct or misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner is affirmed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:HW
kbm
cOPIES MAILED TO:

CLAIMANT

EMPLOYER

Daniel S. Katz, Esq.

UNEMPLOYMENT INSURANCE - TOWSON