

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— 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.

April 1, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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.