



DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES  
Governor

ALMAN R. HETTLEMAN  
Secretary

BOARD OF APPEALS

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MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

- DECISION -

DECISION NO.: 1599-BH-82

DATE: November 10, 1982

APPEAL NO.: 02235

S. S. NO.:

CLAIMANT: James Davis Harris

EMPLOYER: Rapid Rooter

L. O. NO.: 40

APPELLANT: EMPLOYER

ISSUE: Whether the Claimant's unemployment was due to leaving 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 SUPERIOR 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

December 10, 1982

- APPEARANCES -

FOR THE CLAIMANT:

James Davis Harris - Present  
Susan Leviton  
Sharon Johnson

FOR THE EMPLOYER:

Orland Weese-  
Treasurer

#### EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Employment Security Administration's documents in the appeal file.

#### FINDINGS OF FACT

The Claimant was employed by Rapid Rooter as a sewer drain cleaner from March 1978 until approximately October 17, 1981. The Claimant quit his job because he was required to participate in activities that he believed to be fraudulent, including charging customers for unnecessary work. The Claimant reported these activities to the Consumer Protection Division of the Maryland Attorney General's office for investigation.

Although the Claimant did, on at least one occasion, violate a company rule, by taking money without permission in order to pay himself, he was not fired.

#### CONCLUSIONS OF LAW

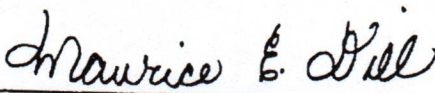
This case came before the Board on an appeal by the Employer. After carefully considering the conflicting testimony and evidence of the parties, the Board concludes that the Claimant quit, but with good cause, due to the actions of the Employer and the conditions of employment. Clearly, not wanting to participate in fraudulent activities constitutes good cause. The question here is not whether the Claimant committed misconduct. Therefore, whether he violated a company rule is not pertinent to this case.

#### DECISION

The Claimant's unemployment was caused by separating from employment voluntarily, but with good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

The decision of the Appeals Referee is affirmed.

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Associate Member

DATE OF HEARING: June 15, 1982

COPIES MAILED TO:

CLAIMANT

EMPLOYER

University of Maryland School of Law

Susan Leviton, Esquire

UNEMPLOYMENT INSURANCE - EASTPOINT



STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
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BOARD OF APPEALS  
 JOHN J. KENT  
 Chairman  
 HENRY G. SPECTOR  
 HAZEL A. WARNICK  
 Associate Members  
 SEVERN E. LANIER  
 Appeals Counsel

- DECISION -

CLAIMANT: James Davis Harris  
 EMPLOYER: Rapid Rooter  
 DATE: March 5, 1982  
 APPEAL NO.: 02285 Java  
 S. S. NO.:  
 L. O. NO.: 40  
 APPELLANT: Claimant  
 GARY SMITH  
 Chief Hearings Officer  
 ISSUE: Whether the claimant's unemployment 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 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 March 22, 1982

- APPEARANCES -

FOR THE CLAIMANT: Present, Represented by Thomas Downs,  
 University of Md. School of Law  
 FOR THE EMPLOYER:

FINDINGS OF FACT

The claimant worked for the employer as a sewer drain cleaner from March 1978 until October 17, 1981 when he left employment. The reason that the claimant left employment was because he observed a number of jobs that were improperly performed or where there were fraudulent activities involved. The claimant cites as one example an instance where a lady customer asked her drain to be cleaned and the claimant was specifically told by the owner of the business to tell the lady that her line was broke. The drain cleaning would have been a minor repair matter but the broken line cost the customer \$1,450.00 to be replaced. In fact there never was a drain that had to be replaced or line

that was broke and the claimant felt guilty about this. The claimant was told by his boss to go out to the job site and pretend that he was digging the ground preparing to have the drain line that was broken repaired. In fact, only the claimant and other employees were just simply digging in the ground and had no reason to do so. After this occurred the claimant decided he did not want to become involved in such misrepresentation or fraudulent matters with regard to customers and he left his job. He immediately reported the activities to the attorney general's office in Maryland in the Consumer Protection Division. The claimant produces an affidavit from the assistant attorney general stating that an investigator for Consumer Protection has received the information regarding this employer as applied additional information shortly after the claimant left this employment.

As an indication of the information of the disbelief of information received from the employer the claimant's attorney presents an affidavit from the State Department of Assessments and Taxations which in fact shows that the employer which alleges itself to be a Maryland corporation is not a corporation incorporated under the Laws of the State of Maryland nor is it a qualified foreign or registered corporation to do business in this state. The claimant maintains that he quit his job because he could no longer stand making these misrepresentations to his employers.

The claimant acknowledges that on the last occasion while he was working he took \$150.00 from the employer's money in order to pay himself. He acknowledges that this was not correct and he has since returned the money.

#### COMMENTS

The evidence is clear that the claimant voluntarily separated from employment within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. The question is whether the claimant had good cause or lacked good cause for separating from otherwise suitable employment. In this case the claimant could not stand the fraudulent activities that the employer directed him to engage in and that the employer in fact was engaged in. These incidents which the claimant has proven constitute good cause for separating from otherwise suitable employment and are directly attributable to the employer and consequently there can be no disqualification under Section 6(a) of the Maryland Unemployment Insurance Law.

#### DECISION

The claimant's unemployment was caused by separating from employment voluntarily but with good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

There is no denial of Maryland Unemployment Insurance benefits.

The determination of the Claims Examiner is hereby reversed.

*J. Martin Whitman*

J. Martin Whitman  
Appeals Referee

Date of hearing: March 1, 1982

jlt

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Copies mailed to:

Claimant

Employer

Unemployment Insurance - Eastpoint

University of Md. School of Law