

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.:	176-BR-89
	Date:	March 10, 1989
Claimant:	Appeal No:	8812699
	S. S. No.:	
Employer:	L. O. No.:	7
	Appellant:	CLAIMANT
Issue:	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 MAYBE 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 9, 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 has consistently held that the refusal of an employee to accept a transfer is a voluntary quit under Section 6(a) of the law. Kramp v. Baltimore Gas and Electric Co. (1051-BR-82); Pyles v. Advance Security (713-BR-84). Such a quit may be for good cause, however, where the transfer is an unreasonable change in the working conditions. Miller v. Fairchild Industries (697-BR-84).

The fact that a transfer constitutes a demotion may establish good cause. Marion v. Dr. David Chiron (1106-BH-82). Where a demotion is a reasonable action on the part of the employer, as in a case where the claimant has demonstrated an inability to perform the functions of the higher position, the demotion does not amount to good cause for quitting. Krach v. Wa Wa Market (816-BH-84); Sullivan v. National Administrative Services (824-BR-86).

This case is analogous to the Krach case. Although the claimant possibly may have physically and mentally been able to perform the functions of her previous higher nursing positions, the hospital policy required that she be demoted, first, to the position of Nurse Technician, then, to the position of Nursing Assistant, upon successive failures of the State Board exams for certification as a Registered Nurse.

The Board finds as a fact that the claimant was aware, or should have been aware, of this policy at the time of hiring. There is thus no question of the employer violating the employment contract.

The only question is whether the employer's policy, as applied in this case, was reasonable. The Board concludes that these demotion policies were reasonable. A successive failure of the exam does indicate some lack of ability to master the skills necessary for the higher position. The hospital would be indeed negligent if it failed to take this into account and continued to assign the same degree of responsibility to someone who had failed the examination twice. There is evidence that the claimant did at least have some opportunity to prepare for the test, having been given paid leave to study and having taken two refresher courses at her employer's expense. There is nothing unreasonable about a policy reducing an employee's responsibilities and pay in these circumstances. The job as Nursing Assistant, though at a lower level of skill, was still within the nursing field, and there is no evidence that the pay was below the prevalent wages for that type of work.

DECISION

The claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning October 23, 1988 and until she becomes reemployed, earns at least ten times her weekly benefit amount, and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed.

K:DW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

- DECISION -

Date: Mailed: 1/12/89
Claimant: Lissamma Joseph Appeal No.: 8812699
S.S. No:
Employer: Community Hospital & Health L.O. No.: 007
c/o Gibbens Company Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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 COURT WITH THE APPEALS DIVISION, ROOM 818, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201 EITHER IN PERSON OR BY MAIL. THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON 1/27/89. NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Lissamma Joseph-- Present
James Joseph - Claimant's Husband

Martha Young,
Gibbens Company; &
Charolette Quinlin,
Department Manager;
Charles Brown,
Employee Relations
Manager.

FINDINGS OF FACT

The claimant was employed from October 26, 1987, hired as a nursing graduate, having been a registered nurse (RN) in India. On the condition that she could continue as an RN after she passed the Maryland State Board Examination.

When the claimant failed this examination for the first time, she became a nursing technician two (NTII), at a pay rate of \$9.31 per hour base for full-time employment. Under hospital policy, the claimant was required to take the Maryland State Board again, with the proviso that if she failed it the second time, she could not be continued as a NTII, but would in fact, would become a nursing assistant. The claimant failed the examination a second time, and in September of 1988, she was told that upon her return from maternity leave of absence, contemplated to be October 24, 1988, she would be a nursing assistant, which entailed a pay cut. The claimant agreed. She did not return on October 24, 1988, because she did not wish to work as a nursing assistant, believing this work was demeaning to her, in that she was a registered nurse and so recognized by another country. The claimant had until October 28, 1988 to accept the employer's decision in this matter, and to return to work under the above-described conditions. She refused to do so. The claimant was not terminated by the employer terminology using the word "termination" concerned her position as a nursing technician.

CONCLUSIONS OF LAW

It is held that the claimant voluntarily quit her employment for reasons which do not constitute good cause for so doing, within the meaning and intent of Section 6(a) of the Maryland Unemployment Insurance Law. It is further held that valid circumstances sufficient to warrant a weekly disqualification have not been presented in that continuing work was available to the claimant and the type of work available to her which was a lesser position than the one for which she had been hired, was due to her failure to meet one of the conditions of the employment. The claimant will be disqualified under the provisions of Section 6(a) of the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner which did not disqualify the claimant under the provisions of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law, will be reversed.

DECISION

The claimant voluntarily quit her employment, without good cause, within the meaning of Section 6(a) of the Law. Benefits are denied for the week beginning October 23, 1988 until re-employed earning ten times the weekly benefit amount and thereafter unemployed through no fault of her own.

The determination of the Claims Examiner under the provisions of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law, is hereby reversed.

Date of Hearing: 12/30/88
rch/Specialist ID: 07196/8311 A-B
Copies mailed on 1/12/89 to:

Claimant
Employer
Unemployment Insurance - College Park (MABS)

The Gibbens Company
c/o Martha Young