



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
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BOARD OF APPEALS

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STATE OF MARYLAND

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— DECISION —

Decision No.: 213-BH-85

Date: March 28, 1985

Claimant: Johnny Campbell

Appeal No.: 12876 & 12877

S. S. No.:

Employer: Montgomery Ward

L.O. No.: 1

Appellant: CLAIMANT

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of §6(a) of the Law; whether the claimant was discharged for misconduct, connected with the work, within the meaning of §6(c) of the Law; whether the claimant failed, without good cause, to accept available, suitable work within the meaning of §6(d) of the law; and whether the claimant was able to work, available for work, and actively seeking work within the meaning of §4(c) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON April 27, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Johnny Campbell;
Odella Oliver,
Legal Aid Bureau

FOR THE EMPLOYER:

Joanne Hinton,
Personnel Spec.;
Judy Goldenberg,
Esquire

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment and Training's documents in the appeal filed.

The claimant testified at great length at the hearing before Appeals Referee John McGucken. At that hearing, the claimant repeatedly stated that the reason he did not return to work for Montgomery Ward on October 31, 1984 was that he was physically unable to do the job. Nowhere during that hearing did the claimant state that he had another job to go to. Nowhere in the previous statements in the case has the claimant mentioned that he had another job to go to. Suddenly, at the Board hearing, the claimant alleges for the first time that he did not return because he had another job with a subcontractor named Blackwell. This job offer was for work which appears to the Board to have been just as heavy as the work which the claimant turned down at Montgomery Ward. The claimant presented no reason why he had never mentioned this job with Mr. Blackwell before, nor could he adequately explain why it was a suitable job when it appeared to be at least as heavy a job as the job at Montgomery Ward. The Board did not believe any of this testimony about the job with Mr. Blackwell.

FINDINGS OF FACT

The claimant was employed from 1983 as a stock clerk helper, earning \$4.68 per hour. He was discharged on October 10, 1984 for numerous occasions of absenteeism and lateness. He applied for unemployment insurance benefits effective October 14, 1984. The claimant also had filed a grievance regarding his discharge. As a result of the grievance, the employer agreed to reinstate the claimant with back pay (but for three days, which would be considered as a suspension). The claimant was requested to return to work on October 31, 1984. The claimant did not return to work on that day, alleging that his back problem resulting from a previous on-the-job injury kept him from performing these duties. The claimant had been under a doctor's care for some period of time as a result of this injury, but the doctor had released him as able to perform all the duties of his occupation. The claimant was, in fact, able to perform all of the duties of his occupation. The claimant did not have a serious prospect of other work at the time he refused to return to Montgomery Ward.

CONCLUSIONS OF LAW

Since the claimant was capable of performing the type of work that he had formerly done, no disqualification is appropriate under §4(c) of the Law.