DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

— 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.

The claimant was discharged on October 10, 1984. The fact that he was later reinstated does not change the fact that he was originally separated through discharge. Since the claimant was discharged for a long series of absences and instances of tardiness, the burden shifts to the claimant to explain these instances. The claimant has explained them only in the most general manner and has not adequately explained the instances of lateness at all. The Board, therefore, will conclude that the claimant was discharged for misconduct within the meaning of §6(c) of the Maryland Unemployment Insurance Law.

The claimant was offered his exact job back on October 31, 1984. Where a claimant is offered his or her old job back, of course, the burden shifts to the claimant to show that the work is not suitable. Bishton v. Baltimore County Department of Aging (879-BR-83). In this case, the claimant has not met his burden of proof. The claimant has merely made the bald allegation that he was unable to continue in this work. This allegation is contradicted by his own doctor's advice and it also contradicts his own statement that he had obtained a job as a combination truck driver/laborer for a subcontractor at about the same time. The Board finds, in addition, that the claimant did not have any serious offer of work at any other place of employment when he refused the offer to return to the job on October 31, 1984. The maximum disqualification under §6(d) of the law for refusing employment will therefore be applied.

DECISION

The claimant was able to work within the meaning of §4(c) of the Law. No disqualification is imposed based upon his medical condition.

The claimant was discharged for misconduct, connected with the work, within the meaning of §6(c) of the Maryland Unemployment Insurance Law. He is disqualified from the week beginning October 7, 1984 and the nine weeks immediately following.

The claimant refused suitable work without good cause within the meaning of §6(d) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning October 28, 1984 and until he becomes re-employed, earns ten times his weekly benefit amount ($1,100) and thereafter becomes unemployed through no fault of his own.

The claimant did not voluntarily leave his work, and no penalty is imposed under §6(a) of the law.

The decision of the Appeals Referee is modified.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:W
kbm
Date of Hearing: March 19, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Ms. Odella Oliver
Legal Aid Bureau, Inc.
Candler Building, 7th Floor
714 E. Pratt Street
Baltimore, MD 21202-3105

Judy-Lynn Goldenberg, Esq.
82 Acorn Circle
Towson, MD 21204

John Roberts - Legal Counsel

UNEMPLOYMENT INSURANCE - BALTIMORE

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: Mailed 12/11/84

Claimant: Johnny Campbell

Appeal No.: 12876 & 12877

S. S. No.:

Employer: Montgomery Ward
c/o James Frick & Company

L.O. No.: 01

Appellant: Claimant

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.

Whether the claimant was able to work, available for work, and actively seeking work within the meaning of Section 4 (c) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON December 26, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by Judy-Lynn Goldenberg, Esquire

FINDINGS OF FACT

The claimant worked for the employer for approximately one year, until September 19, 1984. He was initially employed as an Order Filler, but at the time of separation was working as a stock clerk helper, earning $4.68 an hour.

During the claimant's employment, he had become injured on the job in December, 1983 and remained out on disability leave

because of a back injury for approximately three months. Upon returing to work for the employer, the claimant had returned on a light duty status, but had rapidly been pressed into full duty service. The claimant's physician had released the claimant for full duty service, but since the claimant had remained in therapy, he was, from time-to-time, given doctor's certificates requesting light duty service for weeks at a time.

During the claimant's employment in 1984, after returning from his medical leave, he continued to require exercise and therapy before coming to work and relied upon public transportation with which to get to work. The claimant, as a result of his exercise and therapy and public transportation, was frequently late for work, and was also absent on many occasions, because of his back. The claimant was subsequently discharged by the employer on October 10, 1984, because of his excessive absenteeism and lateness. He grieved this issue to the union and on October 31, 1984 was offered reinstatement by the company with back pay minus a three-day suspension. The claimant declined this offer of re-employment, contending that his back was still bothering him. He did not think he could return to regular duties and had decided to seek employment elsewhere. The claimant was not being advised by his doctor at the time that he could not perform the duties of his job, but had been advised to look for other types of employment. The claimant has been looking for employment that will not require him to constantly be lifting and bending over.

CONCLUSIONS OF LAW

When the claimant failed to return to work to the job that he had been performing for approximately a year, he essentially quit his employment November 1, 1984, when he could have continued to work for the employer. While the claimant has failed to present medical documentation to substantiate that his reasons for terminating his employment, or that he was advised by a physician to terminate his employment, he must, therefore, be denied benefits as having voluntarily quit. In the absence of medical documentation, must be given the maximum disqualification.

Since the claimant is restricting his search for employment to positions that do not require constant lifting and bending, and has put this restriction on his search for work without medical documentation, it must be found that he is arbitrarily and not with the advice of a physician restricting his search for work, and the determination of the Claims Examiner that he is not able and available for work, and actively seeking work will also be affirmed.

DECISION

The claimant left work voluntarily, without good cause, within the meaning of Section 6 (a) of the Law. Benefits are denied for the week beginning September 16, 1984 and until he becomes re-employed, earns at least ten times his weekly benefit amount ($1100), and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.

The claimant is not able, available, and actively seeking full-time, regular employment without restrictions as required by Section 4 (c) of the Law. Benefits are denied for the week beginning October 14, 1984 and until the claimant stops restricting his search for work.

The determination of the Claims Examiner is affirmed.

John T. McGucken
APPEALS REFEREE

Date of Hearing - 12/3/84
cd/4746
(8781/Merryman)

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Claimant
Employer
Unemployment Insurance - Baltimore

Judy-Lynn Goldenberg, Esquire