Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

—DECISION—

Decision No.: 223-BR-90

Date: March 7, 1990

Claimant: Rebecca L. Haynes

Appeal No.: 8912764

S. S. No.:

Employer: Giant Food, Inc.

L O. No.: 40

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.

—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 6, 1990

—APPEARANCES—

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant was employed from July 9, 1984 through July 27, 1989 as a bulk food clerk. In reality, she was in charge of that particular department. She was paid hourly at a rate of $6.95 an hour for full-time work, forty hours per week.

Throughout most of her work history, the claimant was often requested by the manager to perform other duties. Many of these duties were normally the responsibility of a higher official, the grocery manager. They were also duties for which employees were normally paid more. They included "line ups" (arranging rows of new items on the shelves), receiving, "shopbacks" (putting merchandise back on the shelves) , "markdowns ," parcel pickups and other duties. Some of these duties would have been performed normally by a grocery manager who would have been paid twice the rate the claimant was making.

AS a result of this extra effort, the claimant was told that she was a highly regarded employee, a "right hand man." She complained to the management several times that she was performing work which was supposed to be compensated at a higher rate of pay according to the written contract under which she worked. Management failed to do anything about this until the claimant complained to the union. On the advice of her union, she began to refuse to perform any duties outside of her department unless she was paid appropriately for those duties. She made this decision about a month prior to her last day of work.

The claimant began to feel that the manager was then unfairly harassing her. The Board finds as a fact that the manager no longer consistently referred to the claimant as his "right hand man" and informed her that she was "second in line now." The other evidence that the claimant was unfairly harassed by the manager was just too vague and unspecific for the Board to make any findings of fact that it occurred.

More significantly, however, other employees began to use the claimant's newly lowered status as an opportunity to harass her sexually. Inappropriate comments were written about her in the men's room, and inappropriate remarks with sexual inuendo were made to her at the workplace. The claimant complained to the management about this. Upon receipt of the claimant's complaints, however, the manager basically brushed off the claimant's problems and informed her that these problems would go away in time. The claimant filed no formal or official grievance concerning this.

The Board agrees with the Hearing Examiner that the claimant's reasons for leaving did not amount to a "necessitous or compelling" reason for leaving the employment. The Board does conclude, however, that the claimant's reason for leaving does amount to a "substantial cause" which was connected with the conditions of employment. The reason, however, does not amount to "good cause" within the meaning of Section 6(a) of the law.

The employer was not harassing the claimant by ceasing to refer to her as his "right hand man" and making it clear that she was no longer considered to be a special employee. This was not harassment, considering the fact that the claimant had changed her status from an employee willing to do extra work without extra compensation, to an employee willing to do the work required by her contract. On the other hand, the employer's brushing off of the claimant's specific complaints about sexual harassment by the other employees was a substantial cause, and it was clearly connected with the conditions of employment. This was not a reasonable reaction on the part of the employer, no matter how far out of favor the claimant had fallen by deciding to work to rule. Since the claimant, however, failed to file any formal grievance, and since this was only a small part of her reason for leaving, the work conditions do not amount to good cause.

DECISION

The claimant left work voluntarily, without good cause, but for a substantial cause connectedwith the conditions of the employment. These conditions amount to valid circumstances within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning July 23, 1989 and the six weeks immediately following.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:H
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Jack R. Sturgill, Esquire

UNEMPLOYMENT INSURANCE - EASTPOINT

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
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William R. Merriman, Chief Hearing Examiner
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1100 North Eutaw Street
Baltimore, Maryland 21201

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— D E C I S I O N —

Date: Mailed: 12/18/89

Claimant: Rebecca L. Haynes

Appeal No.: 8912764

S. S. No.:

Employer: Giant Foods, Inc.

L.O. No.: 40

Appellant: Claimant

Issue: Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.
Whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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 1/2/90

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant-Present
Jack R. Sturgill, Jr. Esquire

FOR THE EMPLOYER:

Not Represented

FINDINGS OF FACT

This case was originally scheduled for hearing on November 7, 1989. The claimant's attorney could not be present on that date and wrote to the Appeals Division requesting a postponement. This postponement was denied. The claimant after consultation with her attorney determined not to attend the hearing without

counsel. She did not appear and it was dismissed.

The claimant was a bulk foods Clerk in one of the grocery stores operated by the employer. She had been so employed since July 9, 1984. She was a member of an employees union and her job was described in that union contract as limited to ordering replacement items for the bulk food department and in general managing and running that department. In approximately 1985, the store manager began to request claimant to perform additional duties in the store which were higher paid jobs under the union contract. The claimant several times requested the manager to receive the pay differential for these duties or be relieved from them. The manager stated that his hands were tied, but did suggest that the claimant could change her work hours or work schedule so that she would not have to perform these extra jobs. These were impractical suggestions for the claimant because of her home situation.

The claimant finally took the issue of the pay differential to her union representatives and on their advice ceased doing the extra work. At that point, the manager's attitude towards her changed and he constantly criticized the management of her department. At approximately the same time rumors began circulating in the store of the claimant's sexual involvement with another employee. She complained to her manager about these rumors but he said that they would probably pass. The claimant did take the issue of the sexual rumors to her union representative, but was unable to recall what advice, if any, she received. The claimant is not sure whether the employer maintained a human relations division to which she could have gone, but she apparently made no attempts to find out. After approximately one month of the criticism from the manager and the rumors in the store the claimant resigned from this position.

CONCLUSIONS OF LAW

The claimant has shown good cause to reopen this case.

Article 95A, Section 6(a) provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause or valid circumstances, within the meaning of Section 6(a) of the Law.

While the combination of circumstances cited by the claimant was undoubtedly distressing, it would appear that they were of

relatively short duration. The claimant did not pursue the various levels of complaint available to her through her union nor inquire whether similar channels were available through the employer and it is difficult to characterize her circumstances as "necessitous or compelling."

DECISION

There is good cause to reopen this dismissed case under COMAR 24.02.06.02(N).

The unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning July 23, 1989 and until the claimant becomes re-employed, earns at least ten times her weekly benefit amount ($1,550) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is affirmed.

Henry M. Rutledge
Hearing Examiner

Date of hearing: 12/5/89
rc
(10061 & 10062)-Specialist ID: 40303
Copies mailed on 12/19/89 to:

Claimant
Employer
Unemployment Insurance -Eastpoint - MABS

Jack R. Sturgill, Jr.