

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK

Associate Member

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

	Decision No.:	234 -BR-87
	Date:	April 1, 1987
Claimant: Georgann S. Tarr	Appeal No.:	8609652
	S. S. No.:	
Employer: McDonald's of Jacksonville	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 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

May 1, 1987

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon a review of the record in this case, the Board of Appeals disagrees with the reasoning of the Hearing Examiner but affirms the penalty imposed by the Hearing Examiner.

The claimant filed an appeal of the decision of Hearing Examiner Clark dated January 8, 1987. This decision is the result of that appeal.¹

Hearing Examiner Clark's decision found that the claimant left work because of reasons not related to the conditions of employment or actions of the employer. The reason that the claimant had quit was that the employer had changed the number of days of work from 5 to 6 without increasing the salary.

The Board holds as a matter of law that the number of days of work per week is a condition of employment within the meaning of Section 6(a) of the law. Where a claimant has quit because the number of days of work have been changed from 5 to 6, the claimant has quit work because of "conditions of employment" within the meaning of Section 6(a).

Deciding whether the reason for quitting was connected with the conditions of employment is only the first part of the analysis. Once it is determined that the reason for quitting is connected to the conditions of employment, it must be determined whether that reason amounts to "good cause" or a "substantial cause" as those words are used in Section 6(a) of the law.

In this case, the Board concludes that the claimant's reason for leaving constitutes neither good cause nor a substantial cause. Therefore, neither "good cause" or "valid circumstances," as those terms are used in Section 6(a), are present, and the maximum penalty under Section 6(a) must be imposed.

The claimant was employed for 11 to 12 years as an assistant manager at \$18,500 per year. She was a salaried employee. After a transfer to a new location, she was told she would have to work 6 days a week (instead of her customary 5), without additional compensation, and she quit for this reason.

¹The local office of the agency sent the claimant's appeal to the Board, dated January 14, 1987, to the lower Appeals Division as a new appeal. As a result, an additional hearing was held before Hearing Examiner Wolfe on February 9, 1987. Mr. Wolfe took testimony but realized before issuing a decision that the appeal was actually within the Board's jurisdiction. This decision is not based on any testimony before Mr. Wolfe, which is not properly a part of the record in this case.

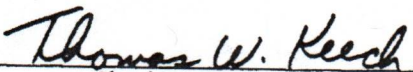
The employer's action was only a temporary move, however, until the store was cleaned up. In fact, at that location, the 6-day week lasted only one week. The claimant did not find out about this because she quit immediately upon being told to work the first extra day.

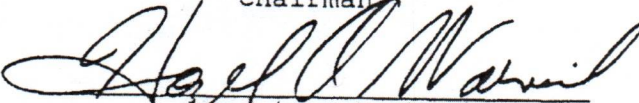
Although the increase in work days from 5 to 6 is a serious matter, the fact that the claimant was on salary and expected to work extra hours as necessary, together with the fact that the increase was only for a very short time, show that the employer's action was in accord with the contract of hire.

DECISION

The claimant voluntarily left her job, 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 July 13, 1986 and until she becomes reemployed, earns ten times her weekly benefit amount (\$1,950) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed.


Chairman


Associate Member

K:W
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

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Chief Hearing Examiner

DECISION

Date: MAILED 1/8/87

Claimant: Georgann S. Tarr

Appeal No.: 8609652

S.S. No.:

Employer: McDonald-s of Jacksonville

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 6(a) 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.

January 23, 1987

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

APPEARANCES

FOR THE CLAIMANT:

Present, accompanied by Husband
Milton Tarr

FOR THE EMPLOYER:

Represented by
Clyde Pevington,
Director of
Operations; Doug
Lozinak, Supervisor

FINDINGS OF FACT

By order dated December 26, 1986, this case was remanded to the undersigned Hearing Examiner for a new decision without a hearing to be issued within 15 days of this order. This case was not given to the undersigned until December 11, 1986 and is being dictated on December 23, 1986 which is within 15 days of receipt. The undersigned was asked to make further Findings of Fact and Conclusions of Law which follow.

The claimant was employed by McDonald's for approximately 12 years. Her last day of work was July 19, 1986. At the time of her separation from employment, the claimant was an assistant manager at the Jacksonville, Maryland store earning \$13,500.00 per year. The employer operates several McDonald's restaurants. Its managers and assistant managers are salaried. The claimant, as an assistant manager, normally was scheduled to work a five-day week. At the new location, the claimant was told that she would have to work an extra day, without pay, in order to assist in the improvement of the level of the operation of the store. She had only been assigned to the Jacksonville store for a few weeks. It was explained to the employees that the extended work week would only last as long as it took to get the store cleaned.

The claimant had previously been a store manager at the employer's Eastern Avenue location in Baltimore City. She was transferred to the Jacksonville store as assistant manager because the employer was not satisfied with her job performance at the Eastern Avenue location.

The claimant did not quit her job when she was transferred to the new location which is in the Baltimore Metropolitan area although further from the claimant's home than the previous location.


CONCLUSIONS OF LAW

The claimant voluntarily left her employment, without good cause connected with the work, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Here, the claimant left her job because she was required to work additional days without additional compensation. All managers and assistant managers are salaried and this was required by the employer without additional compensation. Additionally, the claimant had been transferred to the new location which was further from her home, but still within the Baltimore Metropolitan area. Since the claimant did not quit when she was reassigned, it is concluded that the additional traveling time and distance did not enter into the claimant's decision to leave her employment. Thus, the claimant's separation from employment was not because of the actions of the employer or the conditions of her employment. There is not good cause for the claimant's actions nor are there any serious, valid circumstances present to warrant less than the maximum disqualification. Therefore, the determination of the Claims Examiner under Section 6(a) of the Law, will be affirmed.

DECISION

The claimant voluntarily left her job, without good cause, within the meaning of Section 6(a) of the Law. Benefits are denied for the week beginning July 13, 1986 and until she becomes reemployed and earns at least, ten times her weekly benefit amount (\$1,950.00) and thereafter becomes unemployed through no fault of her own.

This remand decision replaces that decision issued on September 30, 1986. The determination of the Claims Examiner is affirmed.



Seth Clark
Hearing Examiner

Date of hearing: 9/19/86
jlt
(5348-Statens)

Copies mailed on 1/8/87 to:
Claimant
Employer
Unemployment Insurance - Eastpoint

Board of Appeals