

DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS

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Chairman

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SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 256-BR-86

Date: April 16, 1986

Claimant: Howard R. Hughes

Appeal No.: 8600653

S. S. No.:

Employer: All State Boilers
ATTN: Lester Holt

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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

May 16, 1986

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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 crucial issue in this case is whether or not the claimant's employer required him to perform asbestos removal in an unsafe and illegal manner. In this regard, the claimant's witness, a director of the White Lung Association, contradicted directly the testimony of the general foreman of the employer. The employer's testimony was less credible than that of the claimant and his witness because that testimony was vague and generalized and evaded the specific issues (removing asbestos while dry and without protective plastic barriers) raised by the claimant. The one portion of the employer's testimony which was specific was a statement that the employer was never cited for any violations and did not receive one violation. This testimony was contradicted by the claimant's evidence which clearly shows that the employer was cited on January 7, 1986 for the very type of violation testified to by the claimant. Even though this citation occurred after the claimant's employment, it does serve to lessen the credibility of the employer's testimony. In addition, it does document the existence of the very type of problem complained about by the claimant.

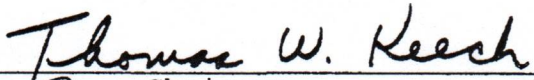
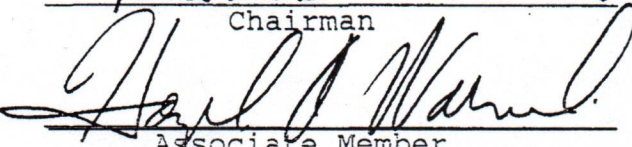
The primary disagreement of the Board with the Hearing Examiner's decision, however, is not with any factual findings. The Hearing Examiner did find as a fact that the claimant was required to violate state and federal health and safety violations during the course of his work. The Board affirms those findings, based upon the testimony of the claimant and his witness, for the reasons cited in the paragraph above. The Board disagrees with the conclusion drawn from these facts. The fact that an employer is requiring an employee to remove asbestos in a dangerous manner which violates state and federal regulations does constitute good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Although the Board has found in the past that a claimant did not have good cause where he walked off a job before making a sincere and reasonable effort to ascertain whether safety equipment was available, Harris v. Kelly Services (37-BR-83), the fact that the claimant in this case walked off the job precipitously, without notice to his employer, is not relevant because the claimant had already complained about the condition and there was no reasonable expectation that further complaints would lead to a better result.

For the reasons above, the claimant will be found to have voluntarily left his employment, but with good cause within the meaning of Section 6(a) of the law.

DECISION

The claimant left work voluntarily, but for good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed upon him based upon his separation from his employment with All State Boilers. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.


Chairman

Associate Member

K:W
kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



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MARK R. WOLF
Chief Hearing Examiner

DECISION

Date: Mailed: February 10, 1986

Claimant: Howard R. Hughes

Appeal No.: 8500653

S. S. No.:

Employer: All State Boilers

L.O. No.: 40

Appellant: Claimant

Issue: Whether the Claimant's unemployment is due to leaving work voluntarily, without good cause, within the meaning of Section 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.

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

FEBRUARY 25, 1986

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present
John Heim,
Oak Groove Tenants Association
John Fite, Executive Director
White Lung Association

Lester Holt,
General Foreman
Gilbert Sapperstein,
President

EVALUATION OF EVIDENCE

Written statements of the Oak Grove Apartment residents submitted on behalf of the claimant are hearsay and cannot be considered in an Administrative Hearing because they were not given under oath nor were they present at the hearing. The same holds true for the written statement of Barry Castleman, which is mostly an outlined of his personal accomplishment and his personal understanding of the Maryland Unemployment Insurance Law as to termination or resignation.

A third exhibit by the claimant is a Notice of Violation of Air Pollution Regulations issued against the employer by the State Department of Health and Mental Hygiene on January 7, 1986 for an occurrence on the same date. There was no testimony to indicate that this particular violation occurred during the claimant's employment or was in any way responsible for the claimant's separation from employment. Thus, this exhibit will not be considered.

FINDINGS OF FACT

The claimant was employed by All State Boilers for approximately six months until December 11, 1985. At the time of his separation from employment, the claimant was a licensed Asbestos Remover, earning \$7.00 per hour. This was a full-time position.

Other employees of this employer were licensed asbestos removers. The claimant was assigned to a project removing asbestos from the Oak Grove Apartment Complex. The claimant became dissatisfied when the employer would not allow him to remove the asbestos according to Federal and State rules. The claimant felt that his license could be placed in jeopardy by continuing to remove the asbestos without following the State and Federal rules.

The claimant had been trained by the employer as a tank tester and on the day before he resigned, had talked to the President of the corporation concerning the amount of work the employer had available in this area. The claimant resigned by letter without notice because he felt he could no longer remove-asbestos the way the employer required. No evidence was submitted, however, that the claimant's license was jeopardized by the employer's actions or that there was any health hazard to the claimant from the employer's actions.

CONCLUSIONS OF LAW

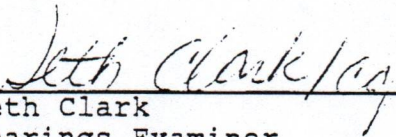
The testimony offered at the Appeals Hearing indicates that the claimant formulated the requisite intent to separate from his employment voluntarily, without good cause attributable to the actions of the employer or the conditions of employer. However, his actions show substantial cause connected with the conditions of employment as to constitute valid circumstances supporting a reduced disqualification as provided for in Article 95A, Section 6(a). In the instant case, the valid circumstance consists of the violations of Federal and State Regulations concerning the removal of the hazardous material. Therefore, the determination of the Claims Examiner under Section 6(a) will be affirmed.

DECISION

The claimant voluntarily left his employment, without good cause connected with the work, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits for the week beginning December 8, 1985 and for the nine weeks immediately following, ending on February 15, 1986.

The determination of the Claims Examiner is affirmed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.



Seth Clark
Hearings Examiner

Date of hearing: January 30, 1986

cdg

(E. Wilson)

Copies mailed on February 10, 1986 to:

Claimant
Employer
Unemployment Insurance - Eastpoint