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.: 294 -BR-86

Date: April 23, 1986

Claimant: Joseph P. Nazarini

Appeal No.: 8600160 & 00161

S. S. No.:

Employer: Chesapeake Bay Seafood House

L.O. No.: 43

Appellant: EMPLOYER

Issue:

Whether the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the law; and 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 23, 1986

— 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 Board of Appeals adopts the findings of fact of the Hearing Examiner.

These cases present a situation which occurs frequently when employees are separated from employment. The employee resigns, giving a two-week notice, but the employer then discharges the claimant prior to the effective date of the resignation.

In Stefan v. Levenson and Klein (1794-BR-82), the Board ruled that, where an employee gave a two-week notice or resignation but the employer terminated the claimant immediately, the penalty to be imposed under Section 6(a) of the law should not commence until the end of the two-week period. The rationale behind this ruling is that, since the claimant's unemployment was not "due to" his resignation until the end of the two-week period, the penalty for voluntarily quitting should not begin until the end of that period. See also, McCarthy v. Suburban Bank (500-BR-84).

An exception to this ruling has been recognized where the claimant, during the notice period, commits gross misconduct and is discharged. Salisbury v. Levenson and Klein (395-BH-84). In the Salisbury case, the Board held that a penalty should be imposed as of the date of the discharge, under Section 6(b) of the law. The rationale for this ruling was that the termination was not merely an acceleration of the resignation date but was for an independent reason, which constituted gross misconduct.

This case falls under the rubric of the Stefan and McCarthy cases rather than the Salisbury case. The claimant did resign with two-week's notice. The claimant was fired during the two-week period. But the reason for the discharge was that the claimant had submitted his resignation and also for an act which was not misconduct. The discharge, therefore, was primarily an acceleration of the resignation date, and the case will be considered as a voluntary quit case under Section 6(a) of the law, from the effective date of the resignation.

Under Section 6(a) of the law, a claimant who has voluntarily quit his job will be penalized unless he has shown "good cause." Good cause must be connected with the conditions of employment. The claimant has failed to show any good cause, as his general dissatisfaction with the management policies and his disagreement with the treatment of another employee (a manager) do not constitute good cause. Nor do these reasons constitute a "substantial cause," and the maximum penalty must be applied.

DECISION

The claimant's unemployment prior to November 26, 1985 was due to his being discharged, but not for misconduct within the meaning of Section 6(b) or 6(c). No disqualification is imposed for the weeks ending November 16, 1985 and November 23, 1985.

The claimant's unemployment after November 26, 1985 was due to voluntary quit, without good cause. The claimant is disqualified from the week ending November 30, 1985 and until he becomes re-employed, earns at least ten times his weekly benefit amount ($1,750) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Associate Member

K:W
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: Mailed: February 6, 1986

Claimant: Joseph P. Nazarini

Appeal No.: 8600160

S.S. No.:

Employer: Chesapeake Bay Seafood House

L.O. No.: 43

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 FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL 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 21, 1986

— APPEARANCES —

FOR THE CLAIMANT:
Joseph P. Nazarini - Claimant
Cindra White - Witnesss

FOR THE EMPLOYER:
Bob Smith
Mike Cleveland

FINDINGS OF FACT

From October, 1984 to November 20, 1985, the claimant worked as an assistant manager. Because of his dissatisfaction with company personnel policy, the restaurant menu, and the clientele, he gave two weeks' notice of his intent to resign.

The claimant's primary dissatisfaction was with the employer's personnel policy which was vague and often unfairly applied. The claimant criticized the policy and voiced his dislike with the way in which one manager was fired. He attempted to talk to someone higher up in management but found it difficult to do so.

The employer's policy is to allow employees to work two weeks after their resignation if they continue to do a good job. For reasons not given, the employer decided that the claimant was not giving 100% and terminated him the day after he orally gave two weeks' notice of his intent to resign. The reasons given by the employer for terminating the claimant were vague and unconvincing. The only specific reason given was that he came to work inappropriately dressed in blue jeans and a sweat shirt one night when he was assigned to the carpet cleaning detail. (See Companion Appeal #8600161). The employer requires all managers to wear a shirt and tie in case they have to deal with the public. Most, like the claimant, wear work clothes and bring an appropriate change. His conduct was reasonable and does constitute misconduct.

CONCLUSIONS OF LAW

The certified issue in this case is whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law. The real issue in the case is whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Law.

The term "misconduct," as used in the Statute, means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during the hours of employment, or on the employer's premises. See Rogers v. Radio Shack, 271 Md. 125, 314 A.2d 113, (1974). The conduct of the claimant in this case does not fall within this definition. Therefore, in the absence of evidence to the contrary offered by the employer at the appeals hearing, the evidence is insufficient to justify a finding of voluntary quit under Section 6(a) of the Law or misconduct under Section 6(c) of the Law.

DECISION

Based upon the above FINDINGS OF FACT and CONCLUSIONS OF LAW, the determination of the Claims Examiner is reversed. The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or

Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon his separation from employment with Chesapeake Bay Seafood House. The claimant may contact the local office concerning the other eligibility requirements of the Law.

Van Caldwell
Hearings Examiner

Date of hearing: January 21, 1986
ras
(0487 ---- Herrmann)

Copies mailed on February 6, 1986 to:

Claimant
Employer
Unemployment Insurance - Wheaton

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Data: Mailed: February 6, 1986

Claimant: Joseph P. Nazarini

Appeal No.: 8600161

S. S. No.:

Employer: Chesapeake Bay Seafood House

L.O. No.: 43

Appellant: Claimant

Issue: Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

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THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON February 21, 1986

— APPEARANCES —

FOR THE CLAIMANT:
Joseph P. Nazarini - Claimant
Cindra White - Witness

FOR THE EMPLOYER:
Bob Smith
Mike Cleveland

FINDINGS OF FACT

The claimant is in the seafood restaurant business. From October 24, 1984 to November 20, 1985, the claimant worked as an assistant manager. On November 19, 1985, the claimant orally gave notice of intent to resign within two weeks because of dissatisfaction with the vague personnel policy and the unfair manner in which it was applied. He was terminated on November 20, 1985, allegedly for wearing blue jeans and a sweat shirt to work

for carpet cleaning detail. The policy of the employer is that management should wear a shirt and tie because they may be called on to deal with customers even though assigned to the kitchen or carpet cleaning detail. The claimant wore blue jeans and a sweat shirt, but brought along an appropriate change of clothing. Most managers assigned to the kitchen or carpet cleaning customarily wear work clothes and bring along a change of clothing in case they have to deal with customers. Prior to this incident, there had not been any complaints about the way the claimant dressed.

CONCLUSIONS OF LAW

Under Section 6(c) of the Maryland Unemployment Insurance Law, claimants who are discharged or suspended for misconduct are temporarily ineligible for unemployment insurance benefits. The term "misconduct," as used in the Statute, means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment, or on the employer's premises. See Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113, 1974. The conduct of the claimant in this case does not fall within any of these categories or definitions.

In the absence of evidence to the contrary offered by the employer at the appeals hearing, there is not sufficient evidence on which to base a finding of misconduct within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law.

DECISION

Based upon the above FINDINGS OF FACT and CONCLUSIONS OF LAW, the determination of the Claims Examiner is reversed. The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from employment with Chesapeake Bay Seafood House. The denial of benefits for the week beginning November 17, 1985 and the four weeks immediately thereafter, ending December 14, 1985, is rescinded. The claimant may contact his local office concerning the other eligibility requirements of the Law.

Van Caldwell

Van Caldwell
Hearings Examiner

Date of hearing: January 21, 1986
ras
(0487 ---- Herrrmann)

Copies mailed on February 6, 1986 to:

Claimant
Employer
Unemployment Insurance - Wheaton