



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

HARRY HUGHES
Governor

BOARD OF APPEALS
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BOARD OF APPEALS

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Chief Hearing Examiner

— DECISION —

Decision No.: 3 -BR-87

Date: Jan. 6 , 1987

Claimant: Raymond A Gasch

Appeal No.: 8609802

S. S. No.: [redacted]

Employer: AFS, Inc.

L.O. No.: 7

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.

February 5, 1987

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 claimant first began work for the employer in August of 1978. He was a store manager.

On July 22, 1985, the claimant made an agreement to purchase the business from the former owner. The bulk of the corporate stock of the enterprise was purchased by the claimant. The stock, however, was held by the former owner, who retained a security interest in the stock. One of the terms of the agreement was that the claimant would be in default if he did not pay his bills on time.

The claimant could not meet the financial obligations required under the agreement. Consequently, the former owner exercised his rights to regain exercise of control over the corporation. Part of the settlement worked out by the attorneys for the parties, was that the claimant resign from his position with the corporation controlling the business. He did so on July 11, 1986.

There was no discussion at all between the parties with respect to the claimant continuing to work in some capacity for the business. The former owner was in no position to offer a job to the claimant, as he had no idea of the financial status of the company (except that he knew that it was generally not good) when he took over control in July of 1986.

The Board concludes that the claimant did not voluntarily leave his employment within the meaning of Section 6(a) of the law. Under the terms of the agreement, the claimant clearly had no choice but to leave, if he failed (as he did) to meet all the conditions of the purchase contract and if the former owner desired him to do so. The former owner did communicate this desire to the claimant, and the act is a discharge within the meaning of Section 6 of the Maryland Unemployment Insurance Law.

Although the claimant failed to explore the possibility of becoming employed in another capacity after he was ousted from control of the company, this does not change the fact that he was effectively discharged. In addition, there is no indication in the record of any reasonable likelihood that the claimant could remain employed in any capacity.

Since the claimant was discharged within the meaning of Section 6, the question arises as to whether the discharge was for misconduct or gross misconduct within the meaning of Section 6(b) or 6(c) of the law. The burden is on the employer in such a case, and no evidence has been presented sufficient to make a finding that the claimant committed misconduct in connection with his work.

DECISION

The claimant was discharged, but not for any misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon his separation from employment with AFS, Inc.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:W

kbm

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CLAIMANT

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