



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
MAURICE E. DILL
Associate Members
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

DECISION

Decision No.: 3 -BR-87
Date: Jan. 6 , 1987
Claimant: Raymond A Gasch
Appeal No.: 8609802
S. S. No.:
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

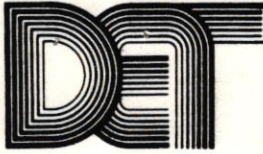
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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK



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DECISION

Claimant: Raymond A. Gasch
Date: Mailed: 10-6-86
Appeal No.: 8609802
S. S. No.:
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 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 October 21, 1986

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Raymond A. Gasch - Claimant

Lawrence M.
Pollicove - Manager

FINDINGS OF FACT

The claimant originally began his employment with the employer of record in August of 1978 and performed duties as a store manager. He last performed such duties on Friday, July 11, 1986 and was separated through resignation.

Evidence reveals that the claimant and the employer's witness present at the appeals hearing had entered into an agreement under which the claimant was attempting to purchase the franchise

for the store where he worked. Financial negotiations were underway, but the claimant was unable to obtain sufficient financing for the purchase. There was some subsequent re-negotiation, but it did not prove feasible for the parties to come to agreeable terms. Both parties consulted with respective counsel, and the claimant's attorney advised him that under the circumstances prevailing, that it would be preferable for him to leave the corporation. Therefore, the claimant offered a written resignation under the date July 14, 1986, in which he stated, "Effective Monday, July 14, 1986 I, Raymond A. Gasch, do hereby resign my position as Chief Executive of AFS, Inc." At that point, corporate direction of the business reverted to the employer's witness. The claimant left the premises and performed no further services after this time. The claimant did not explore the possibility remaining as an employee of the corporation, even though he no longer held the position as a corporate officer.

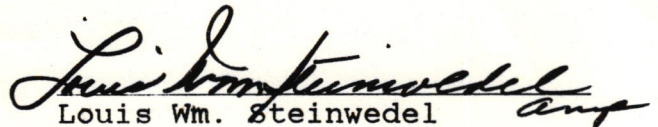
#### CONCLUSIONS OF LAW

A consideration of all of the evidence presented in this case will support a finding that after the claimant's attempts to purchase the franchise and operate the business as a owner were unsuccessful that, relying upon advice of counsel and his own judgment, the claimant determined to completely divorce himself from the enterprise. The claimant made no explorations to whether he might remain in the company as an employee without corporate status. Accordingly, it shall be held that the claimant was voluntarily separated from employment within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. The evidence presented in the case does not demonstrate serious, valid circumstances supporting the resignation as to modify the disqualification as imposed by the Claims Examiner.

#### DECISION

It is held that the unemployment of the claimant was due to his leaving work voluntarily, without good cause attributable to the actions of the employer or the conditions of employment, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning July 6, 1986 and until such time as he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,900) and thereafter becomes involuntarily unemployed.

The determination of the Claims Examiner is affirmed.

  
Louis Wm. Steinwedel  
Hearing Examiner

Date of hearing: 9/23/86  
amp/Kolodkin/6319

Copies mailed on October 6, 1986 to:

Claimant  
Employer  
Unemployment insurance - College Park