Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No: 384-BR-90

Date: April 20, 1990

Claimant: Geraldine Robinson

Appeal No.: 9001351

S. S. No.:

Employer: SES Temps, Inc.

L O. No.: 1

Appellant: EMPLOYER

Issue: Whether the claimant refused available, suitable work within the meaning of Section 6(d) of the law; whether the claimant was discharged for misconduct, connected with her work, within the meaning of Section 6(c) 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, IF YOU RESIDE IN 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 20, 1990

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW. ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner.

The Hearing Examiner actually made no ruling on the issue on appeal in the case. The issue on appeal, as determined by the Claims Examiner, was whether the claimant was discharged from her employment for misconduct connected with the work within the meaning of Section 6(c) of the law. Since no ruling was made on this issue, the Board will issue such a ruling.

With respect to the Hearing Examiner's decision under Section 6(d) of the law, the Board will affirm that part of the ruling. The Board, however, disagrees with the reasoning used by the Hearing Examiner.

The Board makes the following findings of fact. The claimant signed up for work at this employer, a temporary employment agency. The claimant was first given an assignment on November 6, 1989. She worked as a warehouse worker and mail sorter for a client named Harte-Hanks from November 6, 1989 through November 22, 1989. She made $3.75 per hour. Her actual last day of work was November 22, 1989. As of December 1, 1989, Harte-Hanks advised the employer that there was no further need for a temporary worker at their premises.

The employer attempted to call the claimant on December 4, 5 and 6, 1989, but was unable to reach her personally. The employer left a message that another assignment was available at Emptor Mailing Service. This assignment would have begun on December 4 and would have been approximately the same type of job. The claimant did not receive these messages. When she appeared at the work place to pick up her check on December 8, she was not told of any specific assignments. On December 8, however, a woman at the employer's premises did tell the claimant that she could come back in and apply for another job. It is unclear whether this woman was referring to Emptor Mailing Service or was simply making a general statement.

On December 18, SES Temps attempted to call the claimant about another assignment that was available at Harte-Hanks. The claimant, however, was never actually contacted.

The claimant remained physically able to work, but she had a medical problem which required some tests to be done and which eventually required surgery sometime in January.

The claimant's employment came to an end on November 22, 1989. As the Board stated in the case of Laster v. Manpower, Inc. (220-BR-90):

> The employer [a temporary agency] may consider that any person who ceases calling the employer's premises on a regular basis for work has quit the

> employment, but for purposes of the Unemployment Insurance Law, a person becomes unemployed when his remunerative assignment has come to an end. Only in a well documented case where a temporary employment agency can show that a claimant had a long history of practically uninterrupted work assignments, and was virtually assured of continuing work after completing the last assignment, will the Board find that such a failure to recontact the [temporary] agency constitutes a voluntary quit. In making these types of determinations, generalized statements about the availability of work will not be given much weight.

The claimant thus became unemployed when her actual work on her assignment ended on November 22, 1989. She could not be discharged by SES Temps, Inc. on December 4, 1989, because she was not working for that employer on that date. The claimant's acceptance of one short-term assignment does not make her an employee of the temporary agency for any length of time greater than the length of the assignment.

Any claimant, of course, can also be disqualified from the receipt of unemployment insurance benefits if that person has refused suitable work without good cause. There are two distinct reasons why such a penalty cannot be applied in this case. First, there was no actual offer of work made to the claimant. An offer of work must be actually communicated to a claimant before it can trigger a 6(d) disqualification. The employer presented no specific evidence that such an offer was actually communicated specifically to this claimant. It is unclear what was meant by the statement made by the woman in the employer's office on December 8. It is unclear whether any specific job at all was meant by that statement. In order for a disqualification to be imposed under Section 6(d), a specific job offer has to be actually communicated to a claimant. This was not done in this case.

The second reason why a disqualification cannot be imposed under Section 6(d) is that the claimant was not in claim status at the time this job possibility came up. As the Court of Appeals ruled in Sinai Hospital v. Department of Employment and Training, 309 Md. 28, 522 A.2d 382 (1987), this penalty is meant to apply only to job offers made after the claimant has applied for unemployment insurance benefits. As explained in that case, a person's entire employment history is not on trial when an unemployment claim is filed. Refusals of work which took place prior to the filing of the claim are

irrelevant. Thus , even if there had been a bona fide communication to the claimant of an offer of suitable work, it Would not bring about a penalty under Section 6(d) in this case.

There are some questions raised by the claimant's medical problems as to whether or not she is truly able to work within the meaning of Section 4(c) of the law. This case does not deal with that issue, and the local office of the agency may reach that medical issue in the claimant's case if it deems it appropriate to do so.

DECISION

The claimant was laid off from employment. She was not discharged within the meaning of Section 6(b) or (c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her reasons for separation from SES Temps, Inc.

The claimant did not refuse suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. No penalty is imposed based upon the job possibilities mentioned in this case.

The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is modified.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:DW
kbm
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CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - BALTIMORE

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[1]This comment does not apply to the job possibility at Harte-Hanks which arose later, on December 18, 1989, during the effective date of the unemployment claim. There is no evidence, however, that this offer was actually communicated to the claimant.

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Date: Mailed: 2/23/90

Claimant: Geraldine T. Robinson

Appeal No.: 9001351-EP

S. S. No.:

Employer: S E S Temps, Inc.

L. O. No.: 1

Appellant: Employer

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 TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEAL 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 3/12/90

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Al Young,
Executive Vice
President

FINDINGS OF FACT

The claimant filed for unemployment insurance benefits with her benefit year becoming effective December 17, 1989. The claimant worked from November 6, to November 22, 1989, as a Mail Handler and warehouse worker earning $3.75 an hour. On December 1, the

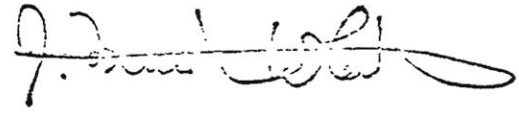
assignment ended at Harte Hanks and the claimant was told this. She was then called to report to work for S E S Temps, Inc. on December 4, 5, and 6, 1989. She could have started to work for Emptor Mailing Service at $4 an hour. She failed to report to work as instructed. The work at Emptor Mailing Service while temporary was of indeterminate lengths.

CONCLUSIONS OF LAW

Generally, the claimant would and should be disqualified under Section 6(d) of the Law, for failing to accept available, suitable work, when offered to her, because the fact situation in this case clearly documents the fact that she did fail to report for available, suitable work, and normally a disqualification would be imposed. However, it has been held that a claimant must be in claim status for Section 6(d) of the Law to apply. See, Calhoun v. Patuxent Inn - The Moorings, 961-BR-83 and Tokar v. Frederick County Board of Education, 158-BR-83. The claimant was not in claim status for unemployment insurance purposes and therefore, cannot on this technicality be disqualified under Section 6(d) of the Law.

DECISION

The claimant was not in claim status, and therefore, her refusal of available, suitable work is non-disqualifying under Section 6(d) of the Maryland Unemployment Insurance Law. There is no separation issue that is disqualifying under Section 6(a) , 6(b) or 6(c) of the Law. No disqualification is warranted and the determination of the Baltimore City Unemployment Insurance Administration office finding the claimant eligible, is hereby affirmed.



J. Martin Whitman
Hearing Examiner

Date of hearing: 2/14/90
rc
(1263)-Specialist ID: 01037
Copies mailed on 2/23/90 to:

Claimant
Employer
Unemployment Insurance - Baltimore - MABS