DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

— DECISION —

Decision No.: 393-BR-86

Date: May 19, 1986

Claimant: Judith J. Netzer

Appeal No.: 8510989

S. S. No.:

Employer: Lori Enterprises, Inc.

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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON June 19, 1986

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The claimant worked as a waitress for approximately five months in 1985 for the employer. She quit her employment by failing to return after having been absent for a period of time to undergo surgery in the hospital.

The claimant testified at length in the hearing before the Hearing Examiner as to her reasons for leaving the employment. Some of these allegations were serious. Despite this fact, no specific findings of fact were made with respect to these allegations. Although the evidence is recited in some detail, no specific findings of fact were made.

The two most serious allegations made by the claimant were that her paychecks were repeatedly late and that she was physically sexually harassed by her employer. With respect to her paychecks being late, it was the unanimous testimony of all the witnesses at the hearing, including the employer, that this did occur on occasion. The Board thus finds as a fact that the claimant's paychecks were repeatedly late, for a significant period of time, on a significant number of occasions.

With regard to the sexual harassment, the claimant's testimony was that the employer repeatedly placed his hands on her breast or buttocks or put his hand up her skirt to touch her in a personally offensive manner. The claimant's testimony in this regard was corroborated by the testimony of her witness. The employer's witnesses also provided corroborative testimony with respect to this touching, although this testimony did not go as far as the testimony of the claimant and her own witness. The Board finds as a fact that the claimant's testimony, that she was touched by the employer on numerous occasions on private areas of her body without her consent and against her express complaint, is accurate.

The Board concludes that the Hearing Examiner placed too much weight on the fact that the claimant decided to quit while she was in the hospital. No employee is required to put up with a situation where his or her paychecks are repeatedly delayed. Such a delay constitutes good cause in itself. In addition, no employee is required to tolerate a situation in which the employer is repeatedly touching her on private areas of her body. Such conduct on the part of the employer constitutes good cause in itself. The Board disagrees with the Hearing Examiner's conclusion that the claimant condoned both of these situations by continuing to work at the premises from February to July. TO state that the claimant condoned this treatment because she worked at the establishment for approximately four months is to penalize the claimant for attempting to make the best of a situation for as long as possible. In these

circumstances, the Board concludes that the claimant did not condone the conditions of employment to which she objected but rather that she tolerated them for as long as she could reasonably be expected to do so.

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

DECISION

The claimant left her employment voluntarily, but for good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from her employment with Lori Enterprises, Inc. The claimant may contact the local office about the other eligability requirements of the law.

The decision of the Hearing Examiner are reversed.

Thomas W. Keech
Chairman

Associate Member

K:W
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Legal Aid Bureau, Inc.
ATTN: Vanita Taylor

UNEMPLOYMENT INSURANCE - EASTPOINT

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date: Mailed: November 18, 1985

Claimant: Judith J. Netzer

Appeal No.: 10989

S. S. No.:

Employer: Lori Enterprises, Inc.

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 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 December 3, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Judith J. Netzer - Claimant
Teckla Chernay - Ex-employee - Witness
Vanita V. Taylor - Legal. Aid Bureau, Inc.

FOR THE EMPLOYER:

Berrak Adar - President & Owner
Steve Beveridge - Waiter
James Longfellow - Employee

FINDINGS OF FACT

The claimant has a benefit year effective September 1, 1985. Her weekly benefit amount is $49.00. The claimant was employed by Lori Enterprises, Inc., t/a Brass Kettle Inn, on February 24, 1985. She was performing duties as a waitress at $2.25 per hour at the time of her separation on July 7, 1985.

The testimony reveals that the claimant quit her employment because of various reasons. She indicated that she was asked to run errands, which she did not feel was part of the waitressing job. She would have to go next door to the store to purchase items that the restaurant ran out of. She never refused to run any errands nor did any one ever instruct her to do so nor did she ever complain to the owner about running the errands. The claimant also contended that she had to wash dishes, which was not part of her job as a waitress. Again, she never complained to the owner and was never instructed to wash dishes. She simply did this as an expedient method to get clean dishes before the dishwasher had done its work.

The claimant also complained about the fact that she had to wait many weeks for her paycheck, but again she did not quit solely on the basis that her checks were late. The checks were late during many of her weeks of employment and yet she condoned this action by continuing to work for the employer.

The claimant contended that another contributing factor to her leaving was sexual harassment. She claimed that the employer touched her on the breast, the butt and, on occasion, put his hand up her skirt. Again, the claimant never reported to the police or to the employer's wife or to any one except a fellow waitress. The two witnesses that appeared for the employer indicated that they never observed such actions on the part of the employer, although the claimant's witness indicated that the employer had also touched her on occasion. The claimiant contended that this took place frequently, approximately ten to fifteen times, and yet she did not quit when it occurred but continued to work for the employer.

The final decision to quit the employment occurred when the claimant became ill and had to be operated on in July 1985. By her own admission she did not make up her mind to quit the employment until she was in the hospital. She was off for four weeks and did not return to work. The employer testified that the claimant had told him that she was planning to return, but that she would need six weeks of rest before returning to her employment. However, she did not call him or ever show up for work after being released by her doctor.

CONCLUSIONS OF LAW

It is concluded from the testimony that the claimant condoned many of the causes which she attributed to her leaving the employment. In addition, the claimant never made complaints to the person who could have corrected the problem in most cases.

There is no testimony that the claimant was ever asked to wash dishes or to run errands, but accepted this on her own volition. She never refused nor did she make complaints to the owner about these duties which she felt were not part of the waitressing job. The same can be said about the paychecks, in that she continued to work there in spite of the delays in paychecks rather than quit when the first check was not on time.

Insofar as the sexual harassment, there is no evidence that the employer's behavior was such that she felt that she had to leave the employment. If, in fact, the employer did do what the claimant alleged, she condoned the action by continuing to work for the employer. If the claimant so resented the employer's action, it is inconceivable why she continued to work for the employer when this occurred with such frequency as she indicated. However, taking all of the claimant's allegations of why she left, she admitted that she did not even make up her mind to quit until she was in the hospital and realized that the employer did not have any medical insurance. It was during her hospital stay that she decided that she would not return to her employment. The salient point, however, in all of the testimony is the fact that with all of the reasons that she gave for leaving, the claimant never made complaints about any of them to the employer. The determination of the Claims Examiner, therefore, will be affirmed, since there are no serious, valid circumstances present in this case to warrant the imposition of less than the maximum disqualification allowed by Law.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good causes within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits for the week beginning July 7. 1985 and until such time as the claimant becomes reemployed and earns at least ten times her weekly benefit amount ($490) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner under Section 6(a) of the Law is affirmed.

William R. Merriman
Hearings Examiner

Date of hearing: November 6, 1985
ras
(7036 -- G. Johns)

Copies mailed on November 18, 1985 to:

Claimant
Employer
Unemployment Insurance - Eastpoint

Legal Aid Bureau, Inc.
ATTN: Vanita V. Taylor