DEPARTMENT OF EMPLOYMENT AND TRAINING
BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383-5032

STATE OF MARYLAND
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Governor

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SEVERN E. LANIER
Appeals Counsel

—DECISION—

DECISION NO: 405-BH-84

DATE: April 18, 1984

CLAIMANT: Kim McCaughey

APPEAL NO: 14299

S.S.NO.:

EMPLOYER: Charles E. Brooks Law Office

LO. NO.: 9

APPELLANT: CLAIMANT

ISSUE: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of §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 A APPEAL EXPIRES AT MIDNIGHT May 18, 1984

-APPEARANCE-

FOR THE CLAIMANT:

Kim McCaughey - Claimant
Kent H. Comegys - Church Elder

FOR THE EMPLOYER:

John Kerney - Law Partner

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as the Department of Employment and Trainings documents in the appeal file.

The claimant testified as to the events leading to her quitting the job, and the Board finds her testimony to be credible.

The employer alleged that the claimant's allegations were made solely to avoid payment of a fee to the employment agency that referred her to the job. The Board does not find any evidence to support this and further notes that the actual principal of the employer against whom her allegations were made has never testified either before the Appeals Referee or before the Board.

FINDINGS OF FACT

The claimant was employed by the Law Office of Charles E. Brooks as a secretary from September 28, 1983 until October 4, 1983. She voluntarily quit her job on October 5, 1983.

On October 4, 1983, the claimant accompanied Mr. Brooks to a client's place of "business to deliver legal papers. At about 2:00 p.m. on the way back to the office, Mr. Brooks d.e-tided that they should stop at a restaurant near the office, since they had not eaten lunch.

While at the restaurant, the employer ordered drinks for himself and the claimant and began propositioning the claimant to have an intimate relationship with him. Although she kept declining, and gave no indication that she was the slightest bit interested, he kept asking.

The conversation continued in the same vein for several hours, the entire time they were in the restaurant. 'de even offered to pay her to stay home if she would have an affair with him. Although the employer never threatened the claimant or directly conditioned her continued employment on accepting his proposition, he refused to take no for an answer, even after she explained that engaging in such a relationship, especially with a married man , was strictly against her religious and moral principles.

By the time they left the restaurant and went back to the office, it was after 5:00 p.m. As the claimant collected her things , preparing to go home, the employer still persisted in trying to persuade her to have an affair with him. When she asked him at one point if he wanted her to leave the job since she was refusing him, he said no, he didn't want her to leave but he added that that did not mean he still didn't want to have a personal relationship with her. When she left for the day, the matter was still unresolved and the employer made it clear to her that he still planned to convince her to have an affair with him.

The next day, the claimant was still very shaken from the events of the night before. The claimant was also aware that the employer already had an intimate relationship with at least one other employee in the office. She was convinced that the employer's propositions would continue and as a result she decided that she would quit her job.

She contacted the employment agency that had referred her to the employer and then went to the office to collect her things. There, although Mr. Brooks was not present, the claimant, who was emotionally upset by the occurrences, told the other employees that she was quitting and that Mr. Brooks would know the reason why.

CONCLUSIONS OF LAW

The claimant's testimony, which is essentially uncontroverted, is that the employer subjected her to a relent-less and unwanted barrage of requests for her sexual favors, lasting over a period of several hours and, despite her constant refusals, made it clear to her that such requests would be continued as long as she worked for him or at least for the foreseeable future.

Although the employer did not threaten the claimant with dismissal if she did not agree to his proposals, his course of conduct on October 4, 1983 and his virtual assurance of the continuation of such conduct constituted sexual harassment of the claimant and created working conditions that were clearly intolerable for the claimant.

What type of behavior constitutes "sexual harassment" is a difficult question land the specific facts of a case must be carefully examined. One generally understood meaning includes: "such lecherous behavior as repeatedly making unwanted sexual propositions to an individual." McCain, "The EEOC Sexual Harassment Guidelines: Welcome Advances Under Title VII?", 10 u. Bait. Law Rev. 275 (1981).

In its regulations, promulgated pursuant to 42 U.S.C. §2000e et. seq., the Equal Employment Opportunity Commission (EEOC) made it clear that sexual harassment may be a form of illegal discrimination under Title VII and defined sexual harassment as follows:

> Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances , requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. [Emphasis added]
>
> 29 C.F.R. $1604 .11(a) (1980)

Thus, it is clear that behavior such as that testified to by the claimant and found as a fact by the Board may be considered "sexual harassment" as that term is generally understood and may also be considered illegal discrimination by the EEOC.

1 See, 29 C.F.R. §1604.11(b) (1980)

In making its determination of whether sexual harassment exists, the EEOC:

> ...will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred.
>
> 29 C.F.R. §1604 .11(b) (1980)

Looking at all the circumstances here, the Board concludes that the claimant was subjected to conditions of employment that were unreasonable , offensive and intimidating.

Of course, whether the claimant's response to the employer's conduct was reasonable under the circumstance, must also be considered in determining whether she had good cause to quit her job under the unemployment insurance law. It might be argued that the claimant quit before she had an opportunity to try to fully resolve the problem or see if it was in fact repeated. However, under the particular circumstances of this case, the Board finds that the claimant's conclusion that the employer's conduct would be ongoing and intolerable and that she w a s basically without recourse, was a reasonable conclusion, Given not only the statements of the employer and his conduct toward herself and others in the office, but also the fact that he was the senior partner in the law firm and that the claimant's contact with him would be almost daily. Courts in other jurisdictions, where the issue of harassment as good cause for quitting under the unemployment insurance law has been dealt with, have recognized that it is unreasonable to expect a claimant to make a formal complaint to her employer about the harassment where such complaint would further subject the worker to personal humiliation or where such a complaint would be futile. See, e.g., Stevenson v, Morgan, 17 Or. App. 428, 522 P.2d 1204 (1974).

The Board further notes that in reaching its conclusion that the claimant' s response was reasonable, it has viewed the facts based on what the "average" person would reasonably do under such circumstances , and not the supersensitive person. See, Stevenson v. Morgan, supra at 1205.

In conclusion, the Board finds that the claimant had good cause to voluntarily quit her job, directly attributable to the actions of her employer, pursuant to §6(a) of the law.

DECISION

The claimant left work voluntarily, but with good cause, connected with the work, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment with the Charles E. Brooks Law Office. The claimant may contact the local office concerning the other eligibility requirements of the law.

[2] For a more detailed discussion of this issue, see, "Unemployment Compensation Benefits for the Victims of Work-Related Sexual Harassment," 3 Harv. Women's L.J. 173 (1980).

The decision of the Appeals Referee is reversed.

Associate Member

Chairman

W:K
kmb

DISSENTING OPINION

I.

The claimant was employed as a secretary by the employer which is a law firm. She worked there only for approximately seven days, and during that time, relations between the claimant and her superiors were usually businesslike. However, the claimant learned that Mr. Brooks, one of the partners in the firm, was having an affair with one of the women in the office and had. purchased a mink coat for that woman. The claimant tried on the coat and liked it. The claimant also learned that Mr. Brooks was married.

On the claimant's last day of work, Mr. Brooks asked the claimant to go with him on a visit to a client across town. Mr. Brooks did not like to travel alone, even across town, and it was usual for him to ask someone, including the women in the office, to accompany him on such visits. The claimant agreed to go with Mr. Brooks.

On the way back to the office, Mr. Brooks offered to take the claimant to a bar-restaurant in the vicinity of the office. Since the claimant was hungry, she accepted with alacrity.

Initially, they seated themselves in the bar area of the establishment. The claimant thought the bar was beautiful; she helped herself to hors d'ouevres, and Mr. Brooks asked what was her favorite drink. The claimant replied that "White Russian" was her favorite drink. Mr. Brooks ordered, and the claimant accepted, a "White Russian" drink. A "White Russian" is a mixed drink containing two alcoholic liquors, vodka and kahlua. While at the bar, Mr. Brooks informed the claimant that he was interested in her, and in establishing a personal relationship with her. He also offered to pay her to stay at home. Although the claimant was "very flattered" by this proposal, she informed Mr. Brooks that she could not accept because he was married; he was already involved with another woman in the office, and because of her religious principles. Mr. Brooks ordered another one of those White Russians for the claimant who accepted it.

At one point during this conversation, the claimant went to the restroom. When she returned, she discovered that Mr. Brooks was then seated in the restaurant area of the establishment. The claimant got her drink from the bar and joined Mr. Brooks in that area where they continued to discuss the personal relationship. The parties were unable to come to terms. They returned to the office where another round of talks took place in much the same manner . At approximately 7:00 p.m., long after business hours , the claimant left the office and went home. When the claimant left the office, she had not formed an intent to quit her job. At no time throughout the entire conversation did Mr. Brooks mention having sexual relations with the claimant, or that her job would be in jeopardy in any way if she did not become more personal with him.

When the claimant returned home, she called her family and the wife of a friend at her church and told them about her conversation with Mr. Brooks. The next morning she called the employment agency which had referred her to this employment to determine if she would be charged with a fee if she quit her job. Once that determination was made, the claimant came to the office, collected her personal property, and voluntarily quit her job. She didn't even say good-by. The claimant quit because she believed that she was so irresistible to Mr. Brooks, that he would continue to pursue her as long as she worked there. The claimant did not report this concern to anyone before she quit. The claimant applied for unemployment insurance benefits shortly thereafter. The claimant is twenty-eight years old. She has had prior working experience in a management position, and holds a college degree.

II

The Unemployment Insurance Law was passed by the General Assembly in 1936 to alleviate the consequences of widespread involuntary unemployment caused by depression. Employment Sec. Admin. v. Browning-Ferris , Inc . 292 Md. 515, 438 A.2d 1356 (1962) . Thus, the basic thrust of the law is the Protection of those who are involuntarily unemployed, however, Section 6(a) of the law makes an exception for those who voluntarily leave their work for a good cause directly attributable to an act of the employer or the conditions of employment.

It is apparent, nevertheless, that good cause for leaving work must arise within the scope of the employment relation, as a matter of law, and not while the employee is off on a frolic and detour of her own. Questions concerning the scope of an employment relation usually arise in the law of the Agency but there is relevance here because Section 6(a) of the law was amended to read "Only a cause which is directly attributable to, arising from, or connected with the conditions of employment or actions of the employer may be considered good cause." In a case such as this, we must determine whether the parties were acting in furtherance of the employment relation, or whether they were about their own affairs.

Here, there was a deviation from the scope of the employment relation when the parties mutually agreed to go to a bar-restaurant on the way back to the job. Once there, they ate, drank, and engaged in conversation respecting purely personal matters. The claimant agreed to the deviation, participated in it, and accepted the benefits of it. This was not a luncheon to go over business matters. The claimant simply went out with a man who happened to be her employer. Under the circumstances, I find it difficult to conclude that the acts of Mr. Brooks were the acts of the employer, qua employer, or the conditions under which the claimant was employed.

Be that as it may, since almost everyone who quits a job has some special gripe, grievance, or reason for doing so, the law holds that the test of good cause is an objective one. The test is stated as follows:

> It has been said to be impossible to give a general definition of good cause. In general 'good cause, ' as used in an unemployment compensation statute, means such a cause as justifies an employee's voluntarily leaving the ranks of the employed and joining the ranks of the unemployed; the quitting must be for such a cause as would reasonably motivate in a similar situation the average able-bodied and qualified worker to give up his or her employment with its certain wage rewards in order to enter the ranks of the compensated unemployed. The term ' good cause' . . . connotes as minimum requirements, real circumstances, substantial reasons, objective conditions , palpable forces that operate to produce correlative results, adequate excuses that will bear the test of reason ; just grounds for action. The test is one of ordinary common sense and prudence.
>
> In order to constitute good cause, the circumstances which compel the decision to leave employment must be real , not imaginary, substantial , not trifling and reasonable, not whimsical; . . . The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman, and not to the supersensitive; and an employee does not leave for good cause within the meaning of the unemployment compensation statutes, where he leaves because of the distasteful character and habits of his fellow employees, or because the work offends his religious or moral principles, or because his family objects to the type of work.
>
> 81 C.J.S. Unemployment Compensation, 449.

There can be no doubt that mistreatment or harassment by an employer can constitute good cause for leaving work. However, such harassment or mistreatment must pass the "average employee" standard which results in a disregard of the standards which individual claimants set for themselves from one moment to the next. Indeed, if individual claimants could set their own standards for good cause, the purposes of unemployment insurance would be defeated, because the fund would soon be depleted.

Moreover, good cause is dependent not only on the reaction of the average employee to mistreatment, but also on the good faith of the employee involved. What this means in practical terms is that the reaction of the claimant in question must be consistent with a genuine desire to work and be self-supporting. 76 A.L.R. 3d. Unemployment Compensation, 1089, 1093. The good faith requirement is often shown where an employee has taken appropriate steps to prevent the mistreatment from continuing such as a complaint to management, or to appropriate public agencies, without satisfaction.

In McCain v. Employment Div. 17 Or. App. 442, 522 P.2d 1208 (1974), a female employee left work, and filed for unemployment insurance benefits complaining that a "sexist attitude" on the part of the employer gave her good cause to quit. The claimant repeatedly complained about posters and cartoons posted on the wall in the workplace which, the court found, would be deemed vulgar and offensive by many. One such poster was captioned "The Perfect Woman," and depicted only a nude woman's legs, hips, breasts, buttocks, and pubic area. No other parts of the body were shown. The court affirmed the Appeal Board's decision to deny benefits to the claimant and stated that the "sexist attitude" of the employer and the fellow employees did not constitute good cause for leaving work absent a showing that the attitude of the employer amounted to sexual discrimination, undue harassment or some other cause of reasonable foundation sufficiently grievous to compel a reasonably prudent person to quit under similar circumstances.

The Stevenson decision, cited by the majority supra, is factually distinguishable.

In Brown v. Unemployment Compensation Board of Review, 170 Pa. Super. 186, 85 A.2d 605, a claimant quit his job because he had to work in extremely cold weather. The claimant worked twenty-five to thirty feet above a river, and the temperature ranged from ten to twenty degrees above zero. The claimant made no complaint to the employer about working conditions, made no effort to retain his employment status, but quit without notice. The Court held that the claimant's quitting did not meet the standards of good faith and unemployment insurance benefits were denied.

In the case under consideration, there was no unlawful discrimination, undue harassment or other cause of a reasonable foundation sufficiently grievous. The claimant complains merely about a proposal made to her during one conversation in which there was no vulgarity, lewdness or indecency. Indeed, I note, the claimant was "very flattered," not repulsed, by the attention she was receiving. On six of the seven days that she worked there, relations were strictly businesslike. I note that many claimants come before this Board complaining of racial or sexual discrimination with a substantial basis therefor, and are denied benefits. Compare the Board Decisions in Blanche Jordan v. Guest Services, Inc. 2151-BH-83, and Charlestine Cain v. University of Maryland Hospital, 194-BH-84, See also the Dissenting Opinions in those cases. Moreover, the claimant knew that she was working for a partnership in which management authority was shared among equals . However, the claimant made no complaint to anyone for the purpose of resolving the matter; she complained only when she sought unemployment insurance benefits. Although the claimant did not agree to Mr. Brooks ' specific proposal because he was married, she believed he had a paramour, and because of her religious principles, she did agree to go to a bar and drink liquor with him, despite any of that, and, at the time, she had practically just met him.

For these reasons, I agree with the decision of the Appeals Referee, Ms. Singleton, that the claimant, who had the burden in this case, failed to establish even a prima facie case that she left work because of a legally sufficient good cause , particularly in view of its good faith requirement. With her college degree, the claimant may have been over-qualified for the position. There is also evidence that she likes expensive clothes, such as mink coats. However, the unemployment insurance fund and the taxpayers should not be charged with benefits paid for the reasons set forth in this case.

Maurice E. Dill
Associate Member

D
kmb
DATE OF HEARING: March 13, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - TOWSON

STATE OF MARYLAND
HARRY HUGHES
Governor
KALMAN R. HETTLEMAN
Secretary

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
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BOARD OF APPEALS
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Administrative
Hearings Examiner

– DECISION –

DATE: Jan. 25, 1984

CLAIMANT: Kim McCaughey

APPEAL NO.: 14299 EP

S. S. NO.:

EMPLOYER: Charles E. Brooks Law Office

L. O. NO.: 9

APPELLANT: Employer

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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON Feb. 9, 1984

– APPEARANCES –

FOR THE CLAIMANT:

Not Present

FOR THE EMPLOYER:

Represented by
John M. Kerney,
Partner

FINDINGS OF FACT

The claimant first began employment with the Law Office of Charles E. Brooks on September 28, 1983 as a secretary. The claimant last worked at this employment on October 4, 1983, and was separated through resignation October 5, 1983.

The claimant gave this employer no reason for her separation. On October 4, 1983, the claimant and Mr. Brooks visited a client and thereafter went to lunch at the Cafe Regina in Towson. The claimant and her employer had a lengthy lunch which lasted the entire afternoon. The claimant left her employment on the following day. This employer was pleased with the claimant's work performance and the claimant was not in danger of separation from this employment.

During the short course of the claimant's employment, Mr. Brooks was not observed as displaying any interest in--a personal relationship with the claimant. Their relationship was characterized as being a normal office relationship.

CONCLUSIONS OF LAW

Under Section 6(a) of the Maryland Unemployment Insurance Law, an individual shall be disqualified from receiving benefits if that individual's unemployment is due to leaving work voluntarily without good cause . Only a cause which is directly attributable to, arising from, or connected with the conditions of employment or actions of the employer to be considered good cause . The weight of the credible evidence in this case indicates that the claimant resigned this employment on October 5, 1983. The claimant did not give a reason for her resignation to this employer. In addition, the claimant failed to appear at the Appeals Hearing to explain the reasons for her separation. The evidence only shows that the claimant spent an afternoon with her employer on business followed by a lunch. Since Mr. Brooks was also not present at the Appeal Hearing, the record in this case contains no direct evidence as to what, if anything, transpired during this lunch. As presented at the Appeals Hearing, the facts in this case do not support a conclusion that the claimant had good cause for resigning this employment. Therefore, it must be held that the claimant shall be disqualified from receiving benefits under Section 6(a) of the Law.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits shall be denied fo the week beginning October 2, 1982, and until the claimant becomes reemployed, earns at least ten times her weekly benefit amount ($1,430.00) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is reversed.

Judith S. Singleton
Appeals Referee

Date of hearing: Dec. 29, I-983
jlt
(Scarboro)

Copies mailed to;
Claimant
Employer
Unemployment Insurance - Towson