



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.:	471-BR-90
	May 14, 1990
Claimant: Earl D. Wrenn	Appeal No.: 8914316
	S. S. No.:
Employer: Kimmel Automotive, Inc. c/o Gibbens Company ATTN: Cynthia Schroeder	L. O. No.: 45
	Appellant: EMPLOYER
Issue:	Whether the claimant left 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, 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

June 13, 1990

- 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 and concludes that the claimant's reason for quitting does not amount to good cause within the meaning of Section 6(a) of the law.

The claimant quit rather than accept a demotion from store manager, at a rate of \$375.00 per week plus bonus, to floating assistant store manager, at \$350.00 per week plus bonus. The claimant was being demoted because of his inability to successfully perform his job as a store manager. The claimant had been placed on probation in May, 1989 and when his performance didn't improve by August, 1989, he was told he would be demoted.

The Board has held that a demotion is not an unreasonable action on the part of an employer where the claimant has demonstrated an inability to perform the functioning of the higher position and such demotion does not amount to good cause. See, Krach v. WaWa Market, 816-BH-84.

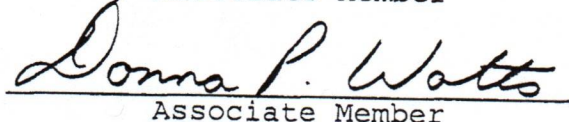
However, since the demotion was potentially substantial, and there is insufficient evidence that the claimant's poor performance was due to deliberate actions on his part, the Board finds that he quit for a substantial cause, connected with his work, amounting to valid circumstances, and the maximum disqualification is not warranted.

DECISION

The claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits for the week beginning August 27, 1989 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

HW:W

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST

 **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: February 16, 1990

Claimant: Earl D. Wrenn

Appeal No.: 8914316

S. S. No.:

Employer: Kimmel Automotive, Inc.
c/o Gibbens Company

L.O. No.: 45

Appellant: Employer

Issue: Whether the unemployment of the claimant 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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

March 5, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Cindy Schroeder,
Gibbens Company
Anthony Sudano,
Division Manager
Orville Diets,
District Manager
Cindy Melloy,
Personnel Manager

FINDINGS OF FACT

The claimant was brought on board with this employer on October 10, 1988 as an assistant manager trainee. He received approximately four months training and was promoted to a store manager assigned to the Liberty Road Store on or about March 1, 1989. At the end of May, the claimant received a store manager evaluation and was rated poorly. He was also rated poorly in his August evaluation and because there was no improvement in his performance, he was advised that he was going to be demoted to assistant manager.

The primary reason for claimant's demotion was his inability to generate profits through sales. As of June 2, 1989 the claimant was advised that during the first three months of his management, he had only achieved 77% of the prior years sales for the same period. 90% of a store manager's job is selling. Therefore, low sales is attributed to a manager's level of performance. The claimant also suffered in the area of providing good customer service. The demotion to assistant manager would have entailed floating from between store to store at the discretion of the division manager. The claimant's salary would have been reduced approximately \$25.00 per week and the hourly rate and the amount of the commission would depend upon the store to which he was assigned. The claimant was given the option to accept the demotion to assistant manager or move on. The claimant chose to move on.

CONCLUSIONS OF LAW

Article 95A, Section 6(a) provides no disqualification from unemployment insurance benefits where a claimant leaves employment with good cause attributable to the actions of the employer or the conditions of employment. The facts established in the instant case will support a finding that the claimant's leaving the employment was for good cause within the meaning of Article 95A, Section 6(a).

The claimant was employed as a store manager and after approximately four months training was expected to earn as much from the company at the store to which he was assigned as the previous manager who in all probability had more experience than the claimant.

Understandably, if sales/profits are low, the company looks to the performance of the manager as being

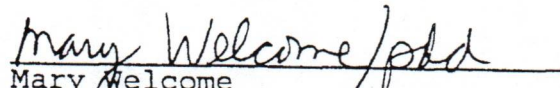
responsible. However, evidence was insufficient to show that the claimant's performance was directly attributed to the low sales. The Hearing Examiner notes with interest, that claimant's Exhibit #1 which indicates that the Liberty Road Store exceeded the gross profit budgeted for that store during the month of March, 1989. Employee's Exhibit #2 which is the August evaluation also indicates that there had been some improvement since the earlier evaluation.

Profit, and understandably so, motivated the employer to demote the claimant. The demotion however, because it changed the conditions of claimant's employment so drastically, provided the claimant with good cause for voluntary separation.

The determination by the Claims Examiner will be reversed.

DECISION

The claimant voluntarily quit his employment with good cause attributable to the actions of the employer and the conditions of his employment. The determination by the Claims Examiner is reversed. Benefits are allowed.


Mary Welcome
Hearing Examiner

Date of Hearing: 01/19/90
pdd/Specialist ID: 45539
Cassette No: 109 B
Copies mailed on 02/16/90 to:

Claimant
Employer
Unemployment Insurance - Northwest (MABS)