



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

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MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 487-BH-85
Date: July 16, 1985
Claimant: Sunday Abraham
Appeal No.: 11455
S. S. No.:
Employer: Prince George's County
L.O. No.: 7
Appellant: CLAIMANT

Issue:

Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of §6(a) of the law; and whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of §§6(b) or 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 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 August 15, 1985

— APPEARANCES —

FOR THE CLAIMANT:
Sunday Abraham

FOR THE EMPLOYER:
Albert Starr,
Pers. Analyst

EVALUATION OF 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 in this case, as well as the Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed as a school teacher with the Prince George's County school system from 1972 until she was separated from her employment in September of 1984. The reason for the claimant's separation was her failure to meet the state certification requirements of earning six college credits, in approved graduate courses, every two years.

There is no dispute that the claimant was and is an excellent teacher. However, state regulations require that in order to maintain her standard certification and eventually obtain her advanced certification, she had to earn six credits every two years. The claimant satisfied this requirement up until July 1, 1983. At that time she was notified by the employer that she had until July 1, 1984 to obtain six credits. These credits "could not, be in what is known as state-approved workshops but had to be actual credits from a university, because the claimant had apparently exhausted her maximum amount of state workshop credits, which was 15 credits in 10 years.

The claimant in good faith attempted to achieve the necessary credits. She signed up for three credits with Towson State University. In addition, she also obtained three credits with the University of Maryland. She also took some courses at other colleges but these were not approved for credit towards her certification.

The claimant was unable to get obtain the three credits from Towson State because of a billing dispute with Towson State University. Because her bill was not paid prior to the completion of the course, she was informed by Towson State that she could not get three credits for this course although she had completed it. As a result, she was unable to meet the state requirements for certification and therefore could not be continued as a teacher in September of 1984.

CONCLUSIONS OF LAW

The Hearings Examiner had concluded that the claimant's failure to be certified was misconduct within the meaning of §6(c) of the law. The Board does not agree with this conclusion. Although the claimant did know since the beginning of her tenure as a teacher that she had to complete this requirement, the facts show that she made a good faith effort to meet these requirements and through a dispute with Towson State University she was unable to complete her certification requirements and therefore was separated from her job. This is not misconduct under the unemployment insurance statute.

Further, the Board does not find this to be a situation of a constructive voluntary quit. The claimant did not ignore the certification requirements; she made a good faith effort to comply with them but due to circumstances that were not totally within her control, she was unable to get the necessary credits. She clearly had no intention to quit her job nor did she deliberately put herself in the position where the employer had no choice but to terminate her.

Therefore the Board concludes that the claimant is not disqualified under §6 based on a separation from this employer.

DECISION

The unemployment of the claimant was not due to leaving work voluntarily, without good cause, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed.

The claimant was not discharged for gross misconduct or misconduct, within the meaning of §§6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from employment with Prince George's County Public Schools.

The decision of the Hearings Examiner is reversed.



Associate Member



Associate Member

W:D

DISSENT

I would agree with the majority's rationale if I could believe that the claimant had tried in good faith to fulfill the continuing educational requirements of her job. I cannot agree, however, that the claimant earnestly sought to fulfill these requirements in good faith.

For at least ten years, the claimant had been aware of the continuing education requirements of the job. For at least ten years, the claimant has been periodically deficient in meeting these requirements.

During her first two years of teaching, from 1972 to 1974, the claimant failed to take any of the required six credits, finally fulfilling these requirements in the summer of 1974, just prior to the beginning of the 74-75 school year.

Two years later, the claimant absolutely failed to meet the deadline and was decertified. She had earned some credits at an institution called the Peace College, but she knew or should have known that these credits did not count toward her continuing education requirements.

The claimant eventually got herself recertified and did obtain the required six credits in each of the two following two-year periods, 76-78 and 78-81.

For the period beginning with the 81-82 school year and ending with the 82-83 school year, the claimant needed an additional six credits. The claimant did not get these credits. The employer then placed her on provisional status and gave her an extra year in which to get six credits.

The claimant didn't get these credits. She did take another course at the Peace College having to do with the Civil Air Patrol. She took courses at another university which was unaccredited at the time. She took a state-sponsored workshop, though she knew or should have known that she had already exceeded the number of workshop credits which could be counted toward her continuing education requirements.

When the claimant was finally fired-in September of 1984, she claimed that her state-sponsored workshop should have been counted as Towson State University credits. (Apparently, state-sponsored credits can be counted as Towson State University credits if the student (1) signs up as a Towson State student and (2) pays Towson State a tuition fee.)

The claimant had taken the course without paying the Towson State fee. After she was fired, however, she blamed Towson State for failing to send her a bill. She stated that, if Towson State had sent her a bill, she would have paid it, would have earned the credits, these credits would have somehow validated some other credits, and she would have been allowed to keep her job.

I would not find from this evidence that the claimant acted in good faith. She didn't even enroll in the state-sponsored workshop until she had already lost her certification. Under these circumstances it was certainly her duty to observe all of the technicalities appropriate to keep herself certified. The claimant even admitted that she knew that she could not get official Towson State credits for the course unless she paid for the course, yet she didn't pay only because (she claims that) she didn't get a bill in the mail. This is not an act of a person

trying in good faith to take advantage of the last chance the employer had given her to fulfill the education requirements. This is an act (consistent with the claimant's ten-year pattern) of taking whatever courses she felt like and then trying to get the employer to accept the credits. She knew what the requirements were and she failed to fulfill them. Her argument that the whole problem is due to Towson State's failure to send a bill is specious.

This is not to imply that the claimant did anything morally wrong or that she is not, in fact, an adequate teacher. There has not been demonstrated in this case any rational relationship between the continuing educational requirements and the performance of claimant's job as a teacher. (One wonders, for example, how the claimant would have been a better teacher had she paid Towson State for the credits.) Nevertheless, the claimant's actions gave the employer no legal choice but to fire her. I would interpret this as a "constructive voluntary quit" or a "provoked discharge" within the meaning of the exception noted in the Allen v. CORE Target City Youth Project case, 275 Md. 69 (1975) and the Board decision in the Jones v. City of Baltimore case (1047-BR-83). Therefore, I would impose a penalty under §6(a) of the law.


Chairman

K
kbm

Date of Hearing: May 14, 1985

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK



DEPARTMENT OF EMPLOYMENT AND TRAINING

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Chief Hearing Examiner

— DECISION —

Claimant: Sunday Abraham

Date: Mailed 11/21/84.

Appeal No.: 11455-EP

S. S. No.:

Employer: Prime George's County
Public Schools

LO. No.: 7

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 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON December 6, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Albert Starr-
Personnel Analyst

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits effective September 16, 1984. The claimant had been employed by Prince George's County Public Schools from August 17, 1972 to September 10, 1984. The claimant was last employed as a Teacher, General Science. The claimant earned \$24, 594 per year. The claimant last worked at Shugart Junior High School.

The claimant was terminated by the Prince George's County Public schools effective September 10, 1984, because the claimant failed to submit to the certification office the required credits necessary to renew her Provisional Certificate which expired on July 1, 1984. The claimant had been sent a letter from the Prince George's County Public Schools on February 1, 1983, which informed the claimant that her current standard professional certificate expired on July 1, 1983. The claimant further had been informed in a letter dated February 1, 1983 that if she did not qualify for the Advanced Professional Certificate; it would result in the issuance of a one-year Provisional Certificate for the 1983-1984 school year. Furthermore, the claimant was issued a Provisional Certificate on July 1, 1983 due to the failure to qualify for the Advanced Professional Certificate in ten years. Further, the claimant had been sent a letter from the Prince George's County Public School on August 4, 1983 which informed the claimant that she needed fifteen credit hours in order to be issued an Advanced Professional Certificate. The claimant had been sent a statement from the Prince George's County Public Schools dated March 26, 1984, which informed the claimant that she needed six credit hours in order to be issued a Provisional Certificate.

The claimant took three courses in the fall semester of 1983 at Towson State University. The claimant took one course in Family Life and Human Development for three credits; a course in Human Relations for three credits, and a course in World Population for three credits. The above three courses were on the graduate level. For the course in Family Life and Human Development, the claimant was not given the credit for taking the course because the claimant did not pay for the course. In the course of Human Relations and World Population, the claimant had to write a term paper for the course. However, approximately December 14, 1983, the claimant had been informed that her father had a terminal illness. Due to the claimant's father's health condition, the claimant did not complete the two courses in Human Relations and World Population. In the spring semester 1984, the claimant did not take any graduate level courses because of handling the matters in her father's estate. In the summer of 1984, the claimant took a graduate level course at the University of Maryland, College Park. The claimant received three credits for taking the course in the summer of 1984 at College Park, Maryland. The claimant took another course at the Peace College in the Manager Training Workshop of the Civil Air Patrol; however, the claimant was not given credit for the course taken at Peace College.

CONCLUSIONS OF LAW

The term "misconduct," as used in the Statute, means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, or on the employer's premises.

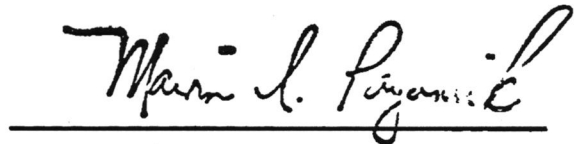
The claimant's conduct by failing to acquire the required credits in order to renew her Provisional Certificates constitutes misconduct in connection with the work within the meaning of Section 6(c) of the Law. The Board of Appeals in the case of Brotherton v. Anne Arundel County Board of Education, (410 -BR-83) held that failure to follow through on an agreement to seek continuing education credits constitutes misconduct within the meaning of Section 6(c) of the Law. Therefore, the determination of the Claims Examiner under Section 6(c) of the Law, will be reversed.

DECISION

The claimant was discharged for misconduct in connection with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning September 9, 1984 and the four weeks immediately following.

The determination of the Claims Examiner is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.



Marvin I. Pazornick
APPEALS REFEREE

Date of hearing: October 31, 1984

Cassette: 7901 A-B

hf (Kolodkin)

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- Claimant
- Employer
- Unemployment Insurance-College Park