

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

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

— DECISION —

	Decision No.:	576-BR-89
	Date:	July 7, 1989
Claimant: Grace Davis	Appeal No.:	8904940
	S. S. No.:	
Employer: Marge Fox Personnel Serv.	L.O. No.:	40
	Appellant:	CLAIMANT

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law; whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

August 6, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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.

The claimant had been employed in full-time, permanent jobs, one lasting over ten years and one lasting over twenty. She learned that there were positions available for clerk-typists at Bethlehem Steel that were full time and relatively permanent in nature. She learned, however, that the jobs were available only through Marge Fox Personnel Services, a temporary employment agency.

The claimant applied at Marge Fox Personnel Services specifically so she could be referred to the Bethlehem Steel job. This was the only reason that she applied to Marge Fox Personnel Services. The claimant was, in fact, referred to the clerk-typist job at Bethlehem Steel, and she obtained the job at \$6.50 an hour. She kept this job, which was full time, for four years and two months, until it was cut back to 30 hours and eventually eliminated as Bethlehem Steel replaced the claimant with a regular employee. Her last actual day of work was March 1, 1989.

The claimant missed the last week of work available because she was ill, and her job ended before she fully recovered. The claimant was then offered two temporary jobs by Marge Fox. The claimant refused the first job because it was only an offer of one or two days' work and because she was still sick. The details of the second job are not shown in the record, except that it was for "short hours," was possibly everyday work, and was located in a funeral home. The claimant refused this also and stated that she did not want any more referrals from Marge Fox. Both of these job offers occurred prior to the claimant applying for unemployment insurance benefits.

The claimant indicated that she did not want Marge Fox to continue offering her assignments. The real reason was that she did not want temporary assignments and wanted permanent work. The claimant began a search for permanent work and located it on May 15, 1989.

The question raised in this case is what penalty, if any, should be applied to the claimant for refusing these assignments from Marge Fox. Clearly, a penalty for refusing suitable work under Section 6(d) of the law cannot be applied, as the offers were made before the claimant applied for unemployment insurance benefits. Sinai Hospital v. Department of Economic & Employment Development, 309 Md. 28, 522 A.2d 382 (1988) .

One possibility is that the claimant might be considered to have voluntarily quit her job under Section 6(a) of the law. The claimant did indicate that she no longer wanted any

referrals from Marge Fox. On the other hand, the claimant had never signed up with Marge Fox for the purpose of obtaining sporadic or temporary positions. She came to Marge Fox only because it was the only way to obtain the relatively permanent job at Bethlehem Steel, the job of which she was independently aware before she contacted Marge Fox.

In the case of England v. Kennedy Temps (177-BR-87), the Board noted:

When a worker signs on with a temporary agency only for the specific purpose of obtaining a specific job which would last for a number of months, a question is raised as to whether that person should be disqualified at a later time for refusing a different job offered by that temporary agency, which is totally outside the original intended scope of the employment relationship. As the economy moves increasingly to the use of temporary employment agencies to fill the positions which were formally held exclusively by permanent employees of the entity in question, a question arises as to what extent can the temporary agency thus defeat a claim for unemployment on the part of the claimant who has been laid off from work at the original intended place of employment.

Although this is an interesting question which possibly will be reached by the Board in the future, it does not need to be reached in this case . . .

This is, of course, the very question which does need to be resolved in this case. Based on all of the facts of this case, the Board concludes that the claimant did not quit her employment with Marge Fox Personnel Services. She thus cannot be disqualified under Section 6(a) of the law. Since the claimant became associated with Marge Fox only in order to obtain a specific, long-term job, and since she worked at that long-term job for over four years and was discharged from the job through no fault of her own, the Board concludes that the claimant did not voluntarily quit but was discharged within the meaning of Section 6(c) of the law, but not for any misconduct. Since the claimant had not associated herself with Marge Fox for the purpose of temporary or part-time jobs, the tender of this type of job was not within the original intended scope of the employment agreement. Therefore, when the specific job for which she was hired was over, she was discharged.

This is not to say that a person cannot voluntarily quit a temporary employment agency. The facts of this case present an unusual situation, in which the original intent of the employment was not to obtain temporary work at all. In addition, there was no evidence that the claimant was offered another position which could be considered substantially equivalent to the job at Bethlehem Steel.

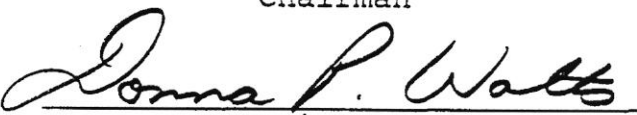
It also remains true that a refusal of an offer of work from a temporary employment agency can result in a disqualification for refusing suitable work under Section 6(d) of the law, provided the refusal takes place while the claimant is filing claims for benefits and the job offered is suitable under the terms of Section 6(d). This disqualification, however, is inapplicable in this case.

DECISION

The claimant did not voluntarily quit her employment within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She was discharged, but not for any misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed, based upon her separation from employment. The claimant may contact her local office regarding the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:DW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



Maryland

Department of Economic & Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

(301) 333-5040

— DECISION —

Mailed: 5/23/89

Claimant: Grace N. Davis

Date:

Appeal No.:

8904940

S. S. No.:

Employer: Marge Fox Personnel Services, Inc.

L.O. No.:

040

Appellant:

Claimant

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 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

June 7, 1989

— APPEARANCES —

FOR THE CLAIMANT:

Grace N. Davis - Present

FOR THE EMPLOYER:

Not Represented

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits effective March 12, 1989.

The claimant was last employed by Marge Fox Personnel Services, Inc., a temporary employment agency, for approximately four years and two months, her last job classification as a clerk typist at an hourly wage rate of \$6.50 assigned to Bethlehem Steel Location. The claimant's separation from this employment occurred March 1, 1989, when this employer determined that temporary help was no longer needed.

The claimant desires no longer to work for a temporary employment agency, even though, during the entire period of time, she was permanently assigned on a full-time basis at Bethlehem Steel Corporation.

The only reason why the claimant worked for this temporary employment agency was her prior knowledge that this temporary agency could get an assignment at Bethlehem Steel Corporation. The claimant has refused, due to her desires to find her own employment under her own terms, several short term job assignments. The employer no longer contacts the claimant due to her desires not to work for a temporary agency any longer.

CONCLUSIONS OF LAW


The claimant's action in not desiring to work for a temporary employment agency demonstrates a will, design and intent to leave one's work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. There are no serious and/or valid circumstances present to warrant the imposition of a disqualification less than the maximum permitted under the Maryland Unemployment Insurance Law, for this employer had other temporary jobs available for the claimant, but the claimant just does not want to work for a temporary agency any longer.


This is an inconsistent reason for separating, for this employer found the claimant a full-time position at Bethlehem Steel during the entire time the claimant worked for the temporary employment services. Under the above facts, the determination of the Claims Examiner shall be affirmed.

DECISION

The claimant's unemployment is due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. The claimant is denied unemployment insurance benefits for the week beginning February 26, 1989 until such time as she again becomes re-employed and earns at least ten times her weekly benefit amount.

The determination of the Claims Examiner is affirmed.



Selig A. Wolfe
Hearing Examiner 

Date of Hearing: 5/16/89
rch/Specialist ID: 40319
Cassette #: 3996
Copies mailed on 5/23/89 to:

Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)