Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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



## — DECISION —

Decision No.: 583-SE-88

Date: July 12, 1988

Claimant: Jerry West

Appeal No.: 8703221

S. S. No.:

Employer: Ronald Jones, et al.

L. O. No.: 12

Appellant: EMPLOYER

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 misconduct, connected with his work, within the meaning of Section 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 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 AN APPEAL EXPIRES AT MIDNIGHT ON August 11, 1988

## — APPEARANCES —

FOR THE CLAIMANT:

Jerry West, Claimant

FOR THE EMPLOYER:

Ronald Jones, Owner;
Michael Jones,
General Manager

## 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 Economic and Employment Development's documents in the appeal file.

## FINDINGS OF FACT

The claimant's last day of employment at the Merritt Athletic Club was May 13, 1987. At the time of his separation, the claimant was employed as the fitness director. He was earning $450 bi-weekly (or $5.62 an hour), and he was working a minimum of 40 hours per week.

On the morning of May 13, 1987, the claimant called the general manager, Michael Jones, at home and advised him that he needed a reduction in his hours of work from 40 to 20 hours per week and a salary raise to $8.00 an hour. The claimant was actually only requesting a temporary reduction in hours, for the approximately two weeks that he was taking his final exams. However, he did not make this clear to the general manager, who believed the claimant was requesting a permanent reduction in hours.

The general manager advised the claimant to speak to him that evening and that he would have an answer for him. The general manager then called his father, Ronald Jones, who is the owner of the Club. The general manager interpreted the claimant's request as an ultimatum that the employer accede to his demands or he would leave. The owner said he would not and could not agree to these demands. However, he instructed his son to negotiate with the claimant to see if a compromise could be reached.

That evening, after the employer's customers had left the work premises, Michael Jones invited the claimant into his office to discuss their prior phone conversation. Michael Jones advised the claimant that he could not accept his offer to work 20 hours per week, nor could he offer him a raise to $8.00 an hour. He then told the claimant that he was terminated. A few more words were exchanged, in which the claimant confirmed that he was terminated and the claimant left.

## CONCLUSIONS OF LAW

Upon careful review of all the evidence in this case, the Board concludes that the claimant was discharged by the employer.

Reaching any conclusion in this case was very difficult due to the lack of clear communication between the parties. Both the claimant and the general manager seemed to expect the other to read his mind. The claimant expected the employer to know that he only wanted his hours reduced for a couple of weeks; the general manager expected the claimant to know that when he said he was terminated, he only meant as fitness director and not necessarily terminated from the entire organization.

Faced with such testimony, the Board must look at who acted more reasonably and who had the burden to take further steps to prevent the claimant's separation. The Board concludes that when the employer told the claimant he was terminated, a word clearly and unequivocally used by the general manager (by his own admission), the claimant reasonably concluded that he was discharged from any further employment with the employer. At that point, it was up to the employer to explain that there were other options for the claimant, and the employer failed to do so. The Board reaches these conclusions for several reasons.

First, the word "termination" has a clear and simple meaning; its use under these circumstances would have led the average person to conclude he had been fired.

Second, the general manager did not offer the claimant any alternatives, compromises, conditions, etc. In fact, he did not give the claimant a chance to respond or make another offer to work, despite the fact that the owner had instructed the general manager to try to work things out with the claimant.

Third, the testimony of the owner that he had instructed the general manager to seek a compromise indicates that the employer did not believe that the claimant would automatically quit if his demands were not met.

The Board also concludes that the claimant was discharged for reasons that do not constitute misconduct. The act of requesting a change in hours and salary is not, <u>per se</u>, misconduct and the Board finds insufficient evidence of any other misconduct on the part of the claimant. While it is true that his unclear requests for changes started a chain of events that led to his discharge, it was the employer's act of terminating the claimant and thereby cutting off further discussion that directly resulted in his separation from employment.

DECISION

The claimant was discharged, but not for any acts demonstrating misconduct, connected with his work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon his separation from employment with the Merritt Athletic Club.

The decision of the Hearing Examiner is affirmed.

Associate Member

Thomas W. Keech
Chairman

HW:K
kbm
Date of Hearing: June 10, 1988

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CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - SALISBURY

# DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040



## — DECISION —

Mailed: 8/14/87

Claimant: Jerry West

Date:

Appeal No.: 8703221

S. S. No.:

Employer: Ronald Jones Etal

L.O. No.: 12

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 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 8/31/87

## — APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Michael Jones,
General Manager

## FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Salisbury, effective May 10, 1987.

The claimant was employed by Ronald Jones Etal, t/a Merritt Athletic Club, as a Fitness Director over an eight-year period, at a last pay rate of $450 bi-weekly.

The claimant had been attending college locally. During this time, he maintained his full-time employment with Merritt Athletic Club. There came a time when the claimant was preparing for a final examination. He telephoned the general manager to advise

that thereafter, he could only work 20 hours per week and he wanted a pay increase to $8 per hour. The employer took this to be an ultimatum it could neither tolerate nor accept. The employer required full-time services of its athletic directors, and in view of the ultimatum that the claimant would not work more than 20 hours per week, the claimant was terminated.

The claimant had been previously warned about his work performance. In rejecting the ultimatum, the employer did not indicate that the claimant could continue employment at his regular rate of pay, but instead he was discharged.

I find as fact that the claimant did not quit, nor did he intend to quit the employment with Merritt Athletic Club, rather he was discharged for suggesting a reduction in hours and a higher rate of pay.

## CONCLUSIONS OF LAW

It is concluded that the claimant did not voluntarily terminate his employment with Merritt Athletic Club. While the claimant may have come on strong, with respect to his request for a reduction in hours at a higher rate of pay, which the employer perceived as an ultimatum. Yet, such conduct would not be considered as gross misconduct connected with the work, for requesting a pay increase. Nor does the evidence show that the claimant voluntarily quit his job by indicating that it was his intention to reduce his hours, but only with a higher rate of pay. Here, clearly, the employer took the initiative and discharged the claimant for presenting to it conditions of continued employment which it perceived to be an ultimatum.

## DECISION

It is held that the claimant's unemployment was due to leaving work involuntarily, for a non-disqualifying reason, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits are allowed for the week beginning May 10, 1987 and thereafter, provided the claimant is otherwise eligible and meeting the requirements of the Maryland Unemployment Insurance Law.

Robin L. Brodinsky
Hearing Examiner

Date of hearing: 7/22/87
rc
(4330)-Peterson
Copies mailed on 8/14/87 to:

Claimant
Employer
Unemployment Insurance - Salisbury - MABS