



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH  
Chairman

HAZEL A. WARNICK  
MAURICE E. DILL  
Associate Members

SEVERN E. LANIER  
Appeals Counsel

MARK R. WOLF  
Chief Hearing Examiner

— DECISION —

Decision No.: 62 -BR-87

Date: January 29, 1987

Claimant: Sheila Torain

Appeal No.: 8611681

S. S. No.:

Employer: Wackenhut Security

L.O. No.: 45

Appellant: CLAIMANT

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 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 February 28, 1987

— 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 Board adopts the findings of fact of the Hearing Examiner. Based upon these facts, the Board finds that the claimant had good cause for leaving her employment.

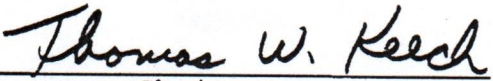
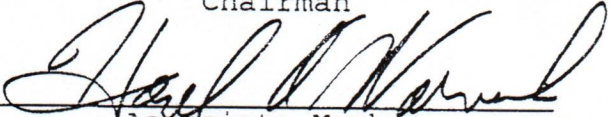
The claimant was physically sexually assaulted by her supervisor on the work premises during work hours. Prior to this occasion, the claimant had been sexually harassed by the same supervisor and had made complaints to higher management about this harassment. Due to the nature of the job assignment, the claimant was still working for the same supervisor, in an empty building, when the last incident occurred.

Physical sexual assault by a supervisor constitutes good cause for leaving, especially when previous incidents of sexual harassment by the same supervisor have been brought to the attention of management. For this reason, good cause will be found and the decision of the Hearing Examiner reversed.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, but for good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment with Wackenhut Security.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Chairman  
  
\_\_\_\_\_  
Associate Member

K:W

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Donna Gross - Room 413

UNEMPLOYMENT INSURANCE - NORTHWEST



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

(301) 383-5040

BOARD OF APPEALS

THOMAS W. KEECH
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Associate Members
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

DECISION

Claimant: Sheila Torain

Date: Mailed: 12/5/86

Appeal No.: 8611681

S. S. No.:

Employer: Wackenhut Security

L.O. No.: 45

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.

Whether the claimant was overpaid benefits within the meaning of Section 17(d) 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 2/22/85

APPEARANCES

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

William Gensler,
Manager of Physical
Security

FINDINGS OF FACT

The claimant began her most recent period of employment with the employer of record in early July 1986. The claimant performed the duties as a Security Guard and last performed these duties on July 13, 1986. The claimant was voluntarily separated from the employment.

Evidence presented at the appeal hearing shows that the claimant worked with a supervisor named Mr. Scrievener. The claimant performed her security services in a downtown area at Martin

Daycare Center in the YWCA building on Fayette Street. The claimant had been sexually harassed by her supervisor, Mr. Scriver, on prior occasions and had made complaints to the employer. The problem continued and on July 13, 1986, the claimant was approached from behind by her supervisor in an empty building. She was grabbed by him and he attempted to place hands inside of her blouse. The claimant protested this action and engaged in a physical confrontation with the supervisor to ward off his advances. Subsequently, the claimant left the building and returned home. It was her intention to collect the pay that she was owed and sever the work relationship. Subsequently, after this event the claimant was offered work in the Cockeysville area but declined.

The record shows that the claimant had worked periodically for the employer of record approximately six years and had several periods of employment with the company during that time.

It is the employer's position that after the claimant left her post that she was terminated from the employment.

#### CONCLUSIONS OF LAW

The record will support a conclusion that the claimant voluntarily resigned her employment with Wackenhut Security. The test for voluntary resignation provided in the case of Allen v. CORE Target City Youth Program, 275 Md. 69, and in that case the Court says: "As we see it, the phrase due to leaving work voluntarily has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment." In the instant case the claimant, following the assault by her supervisor, reached a decision to sever the employment relationship and to collect her back pay. Whether or not the employer determined to separate the claimant for leaving her post subsequent to that is immaterial. The severance of the employment relationship had occurred at the time that the claimant left the job site with an intention to leave the employment and to collect her back wages.

The question presented is whether the claimant's leaving was for good cause attributable to the actions of the employer, conditions of the employment, or whether there were serious, valid circumstances supporting the claimant's leaving or if neither of these circumstances were present. In the instant case, the evidence shows that the claimant had made prior complaint to the employer about the actions of her supervisor and that she was concerned for her security. It is reasonable to justify the

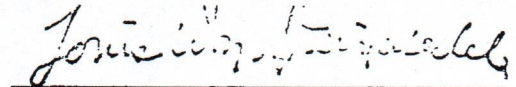
claimant's leaving a deserted downtown building occupied only by another person whom she perceived as intent upon inflicting harm on her. However, upon leaving the building and returning home, the claimant did owe a duty to the employer to notify them immediately that she had left the post and to fully describe to the employer what had occurred. It is within reason that the claimant could have been assigned other duties at another job site immediately or soon after.

In consideration all of the circumstances presented in this case it shall be held that the claimant resigned the employment without good cause, but with serious, valid circumstances within the meaning of 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. She is disqualified from receiving benefits from the week beginning July 6, 1986 and for the nine weeks immediately following.

The determination of the Claims Examiner



Louis Wm. Steinwedel  
Louis Wm. Steinwedel  
Hearing Examiner

Date of hearing: 11/19/86

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(7295)-Gray

Copies mailed on 12/3/86 to:

Claimant

Employer

Unemployment Insurance - Northwest

Donna Gross - Rm. 413