

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.:	644 -SE-88	
	Date:	July 27 , 1988	
Claimant:	Robin Parsons	Appeal No.:	8705792
		S. S. No.:	
Employer:	Salisbury Nissan, Inc.	L O. No.:	12
		Appellant:	EMPLOYER

Issue:

Whether the claimant's unemployment is 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 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 26 , 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Robin Parsons, Claimant

FOR THE EMPLOYER:

William Pickin,
Sales Manager;
Robert Fine, Atty.

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. The Board notes that the claimant's testimony has not been refuted by her employer at either hearing.

FINDINGS OF FACT

The claimant worked at Salisbury Nissan, Inc. from January 31, 1987 to April 10, 1987 as a greeter. She was earning \$4.00 an hour. The claimant voluntarily quit her position, by failing to return to work after April 10, 1987, because she had been the victim of sexual harassment by a male co-worker.

On Friday, April 10, 1987, the claimant and a co-worker, Wayne Girts, the finance manager, were the only two remaining employees at Salisbury Nissan, Inc. at the time the dealership was about to close. The claimant punched out her time card and proceeded to leave the office and meet a female friend, who was waiting for her on the parking lot, when she was confronted by Mr. Girts. He had locked all of the doors that the claimant could use to exit, and he impeded her progress by standing at the top of the set of stairs. As the claimant attempted to leave, he placed his hand on her shoulder, and attempted to kiss the claimant, kept holding onto her arm and tried to force her into his office. He told her that he was a real man and her husband was not, and he kept trying to touch her. Although the claimant refused his advances, he persisted and would not let her leave, nor would he let her use the telephone, until the claimant would agree to go out with him that evening. This went on for about 15 minutes. The claimant was scared and emotionally upset. At one point, she even slapped this individual. When the claimant saw that she could not reason with him, she told Mr. Girts that she would make arrangements with him to go out to dinner, if he would let her leave the premises immediately. With this offer of a future liason, Mr. Girts permitted the claimant to leave. She later told her husband about the incident and eventually filed a complaint with the Human Relations Commission, but she did not call the police.

Although the claimant was scheduled to work the following day, April 11, 1987, she called in sick. On the following Monday, April 13, 1987, the claimant had her sister-in-law call in and report that she was still ill, and that she would not be reporting for work. The claimant, in fact, was not sick, but she did not want to return to work because of the incident that occurred the previous Friday evening.

Although she was emotionally upset by this incident, the claimant did not inform anyone in management at Salisbury Nissan, Inc. of this incident. She feared that the employer would not believe her and that she might have been fired. In any event, she did not want to return there. The claimant never returned to work after April 10, 1987, and told the employer that it was due to a conflict within the dealership.

CONCLUSIONS OF LAW

Section 6(a) of the Maryland Unemployment Insurance Law provides that only a cause which is directly attributable to, arising from, or connected with the conditions of employment or actions of the employer, may be considered good cause for voluntarily quitting one's position. In addition, only a substantial cause, which is directly attributable to, arising from, or connected with the conditions of employment or actions of the employer, or another cause of such a necessitous or compelling nature that the individual had no reasonable alternative other than to leave the employment may be considered a valid circumstance.

The Board of Appeals concludes that the claimant voluntarily quit her job without good cause but for valid circumstances within the meaning of Section 6(a) of the law.

The claimant was subjected to a serious and traumatic incident of sexual harassment by a co-worker. No employee should be expected to tolerate this kind of behavior, and it is understandable why she felt she could not return to work. However, the claimant never informed the employer of this incident and therefore deprived the employer of an opportunity to correct the situation. In Selby v. Milehew & King, Inc., 255-SE-86, the Board held that where a claimant failed to notify the employer of the sexual harassment by a co-worker, she failed to take reasonable steps to correct the matter and therefore she quit her job without good cause within the meaning of Section 6(a). The same reasoning is applicable here.

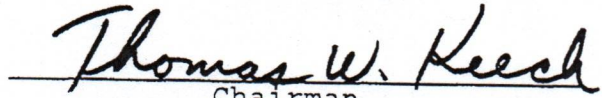
The Board did conclude in Selby, that the sexual harassment, which consisted of repeated sexual advances, including improper touching of the claimant, was such an intolerable situation that her quitting was a substantial cause connected with the conditions of employment, thus constituting valid circumstances within the meaning of Section 6(a). Again, that same reasoning applies here and therefore only a minimum disqualification is appropriate.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, but with valid circumstances, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning April 5, 1987 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

HW:K

kbm

Date of Hearing: June 10, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Robert B. Fine, Esq.

UNEMPLOYMENT INSURANCE - SALISBURY



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

BOARD OF APPEALS

THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
Associate Member
SEVERNE E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

- DECISION -

Date: Mailed July 24, 1987

Claimant: Robin S. Parsons

Appeal No.: 8705792

S. S. NO.:

Employer: Salisbury Nissan, Inc.

L.O. No.: 12

Appellant: Claimant

Issue: Whether the Claimant voluntarily quit his employment, 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 August 10, 1987

- APPEARANCES -

FOR THE CLAIMANT

Present

FOR THE EMPLOYER

Not Represented

FINDINGS OF FACT

The Claimant worked as a greeter for Salisbury Nissan, Inc. from January 31 until April 10, 1987 earning \$4.00 an hour. The Claimant quit her job and alleges that on the evening of April 10, 1987 while at work Wayne Gritz, the Finance Manager, made advances toward her. She alleges that Mr. Gritz tried to get her to go to his office and grabbed her

arm and tried to push her down on the couch. She states that Mr. Gritz was making sexual overtures toward her. He was trying to kiss her and asked her for a dinner date. She then quit her job the next day because of this alleged sexual harassment. The employer does not appear but presents separation information to the local office denying all of the Claimant's allegations. The employer also questions why the Claimant did not notify the police. A couple of days after the Claimant quit her job, she did contact the local Human Relations Commission to complain about the alleged harassment.

EVALUATION OF EVIDENCE

The Claimant's testimony is the sole basis of the Claimant's allegations. She presents no proof or other testimony, and her statements under oath are highly suspect.

The employer elects not to appear. Conflicting information in separation information provided to the local office.

CONCLUSIONS OF LAW

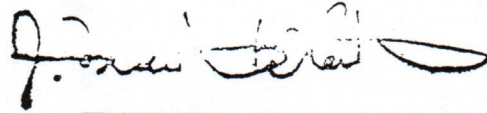
There is a direct conflict between the evidence presented by the Claimant and the information supplied by the employer. The employer elects not to appear at the Appeals Hearing. Thus, the only probative testimony presented is that of the Claimant. Unfortunately, the Claimant alleges sexual harassment by the finance officer of the employer while at work, which led to her immediate decision to quit her job. In the absence of probative evidence that might have been produced by the employer, this Hearing Examiner is compelled to accept the only probative evidence presented, and that is of the Claimant. The Claimant's testimony supports a finding that the Claimant left employment for reasons directly attributable to the actions of the employer and hence, constitute a good cause for leaving otherwise suitable employment. The Claimant alleges harassment by the finance officer of a sexual nature which caused her to quit her job. Such harassment would constitute good cause, and in the absence of contrary evidence, the only probative testimony presented is that of the Claimant, and thus good cause has been demonstrated.

DECISION

The unemployment of the Claimant was caused by leaving work voluntarily, but for good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. There is no denial of Maryland Unemployment Insurance

8705792

The determination of the local office is hereby reversed in favor of the Claimant who should now consult her local office with regard to all of the other eligibility factors of the Law.



J. Martin Whitman
Hearing Examiner

Date of Hearing: 7/8/87

Cassette: 3440 (Ford)

Copies Mailed on July 24, 1987 to:

Claimant

Employer

Unemployment Insurance - Salisbury (MABS)