

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.: 677-BR-89
Date: August 11, 1989
Claimant: Joseph C. Hull
Appeal No.: 8906431
S. S. No.:
Employer: Waste Management of Md., Inc. L. O. No.: 23
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, IF YOU RESIDE IN 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 September 10, 1989

— 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.

This case present a novel question concerning the burden of proof in unemployment insurance cases.

The claimant quit his employment rather than accept a 60-day probationary period as a punishment for the alleged sexual harassment of female employees. During the 60-day period, the claimant's base salary would have remained the same. He would have, however, been temporarily stripped of his managerial responsibilities. In addition, he would have lost some remuneration from commissions or bonuses.

The employer had received complaints from some female employees that the claimant was harassing them sexually. The employer reported these complaints to the claimant and also investigated on its own. The employer, however, refused to reveal to the claimant either the exact nature of the complaints nor who the complainants were. These facts were also not produced at the unemployment insurance hearing. The methods employed in the investigation, the extent of the investigation and even the detailed results of the investigation were not revealed to the claimant, nor were they revealed at the unemployment insurance hearing. The employer simply reported to the claimant that, after his investigation, he believed that the complaints were true.

Where an employee quits his job rather than face disciplinary action by the employer, neither "good cause" nor "valid circumstances" may be found where the disciplinary action is warranted and reasonable. Clark v. Citizens Nursing Home (365-BR-84), Dunphy v. Farm Fresh Supermarket (964-BR-85).

The important question, then, is whether the disciplinary action was reasonable. The burden of proof is normally on a claimant who quit his job to show that the disciplinary action was unreasonable. Dashield v. K & L Microwave (784-BR-86).

In this case, however, there is no way that the claimant could have met his burden of showing that the disciplinary action was unreasonable. Due to the actions fo the employer, the names of the complainants, as well as the exact nature of the complaints, were kept secret from him. Under these circumstances, it would be unfair to require him to prove that the suspension was unreasonable.

The Board thus concludes that the employer in this case had the burden of showing that its disciplinary action was reasonable. Furthermore, the Board concludes that the employer has not met that standard in this case. A mere statement that unnamed women had accused him of unspecified acts of sexual



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— DECISION —

Claimant	Joseph C. Hull	Date	Mailed: 6/19/89
		Appeal No.:	8906431
		S. S. No.:	
Employer	Waste Management of Md., Inc.	LO. No.:	23
		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 July 5, 1989

— APPEARANCES —

FOR THE CLAIMANT

Claimant-Present

FOR THE EMPLOYER

Robert S. Bohager,
General Manager

FINDINGS OF FACT

The claimant began employment February 23, 1986, initially performing duties as a salesman. He held the position as sales manager, when he last performed services on or about February 22, 1989.

The record demonstrates that a complaint of sexual harassment was made against the claimant by female employees. The employer made investigation of this claim, and ultimately accepted the complaint as accurate and valid, despite a denial by the claimant

when the issue was brought to his attention. However, the accusers were not identified to the claimant.

The employer's response in dealing with the situation was, in the short term, to place the claimant on one week suspension, in the long term to put the claimant on sixty day's probation, during which time, he would not be performing the sales manager function. The claimant's base pay remained the same, but the claimant was fearful that his commission earnings may be reduced. The claimant would be observed in his demeanor toward female employees during the sixty-day probationary period and, in the absence of further complaint or problem, would be returned to the sales manager position.

The claimant declined to accept the employer's action, fearing that it would undermine his position with sales employees, and because he rejected the allegations and the basic reasons for the actions taken by the employer. After absence for unrelated personal reasons, the claimant declined to return to the employment, and was deemed to have resigned the employment.

CONCLUSIONS OF LAW

In this case, the employer made an investigation of allegations of sexual harassment raised by female employees, and concluded them to be sufficiently valid to take disciplinary action against the claimant, which fell short of discharge. The disciplinary actions consisted of one week suspension, and sixty days' probation with eventual return to his position as sales manager. The claimant was unwilling to return to the employment under these terms.

In the case of Dunphy v. Farm Fresh Supermarket (964-BR-85) the Board of Appeals held that a claimant voluntarily resigned without good cause or valid circumstances where that claimant left the employment after being reasonably suspended for five days. The precedent in that case is applicable to the facts at issue and the precedent shall be followed in sustaining the determination of the Claims Examiner.

DECISION

It is held that 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. He is

disqualified from receiving benefits from the week beginning March 12, 1989, and until such time as he becomes reemployed and earns at least ten times weekly benefit amount (\$2,050).

The determination of the Claims Examiner is affirmed.



Louis Wm. Steinwedel
Deputy Hearing Examiner

Date of hearing: 6/13/89
rsb/Specialist ID:23993
Cassette #5065
Copies mailed on 6/19/89 to:

Claimant
Employer
Unemployment Insurance-Columbia(MABS)