



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND  
HARRY HUGHES  
Governor

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.:	791-BH-84
Date:	October 3, 1984
Claimant:	Theresa I. El-Jallad
Appeal No.:	01386
S. S. No.:	
Employer:	J. Vinton Schafer & Sons, Inc.
ATTN:	George A. Hall, Vice-President
L.O. No.:	22
Appellant:	CLAIMANT

Issue: Whether the claimant's unemployment was tide to leaving work voluntarily, without good cause, within the meaning of §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 November 2, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Theresa El-Jallad, Claimant  
Gary Smith, Esq.

FOR THE EMPLOYER:

Peter S. Saucier,  
Attorney;  
George Hall,  
Vice-president ;  
Gregory Redding,  
Attorney -  
observer

## 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 Employment and Training's documents in the appeal file.

The Board notes that one of the employer's exhibits, purports to be a chart comparing the qualifications of the claimant to another employee, Nelson Knowles, Jr. While the document is in evidence, the Board has given it virtually no weight. The employer admitted that it was prepared after the decision to promote Nelson Knowles, Jr. and not the claimant, had already been made. The Board finds it so totally subjective and lacking in any objective standards of evaluation as to be totally meaningless .

The Board further notes that there is some evidence that a sexually derogatory comment was made about the claimant by someone in management at a meeting held to discuss the claimant's complaint. However, there is no evidence that this comment was a factor in the decision not to promote the claimant and in fact the Board has concluded that other factors were the primary reasons for the employer's decision. The employer completely denied that such a comment was ever made.

## FINDINGS OF FACT

The claimant was employed by J. Vinton Shafer & Sons, Inc. from August, 1980, until she resigned on or about April 12, 1983.

The claimant was originally hired as an accounting clerk, but was promoted to assistant comptroller in January, 1981 and her salary was increased to \$295.00 per week. The claimant had a Bachelors Degree at the time she was hired but shortly thereafter she began taking courses towards her Masters Degree in accounting. The employer paid for these courses and in December, 1982 the claimant obtained her Masters Degree. The cost of these courses to the employer averaged about \$23.00 per week.

At the time that the claimant was promoted to assistant comptroller, her boss, George Hall, who was the comptroller as well as Vice-President of the company, indicated to her that when she was fully trained and ready there was a good possibility that she would be promoted to comptroller of the company. Although this was not guaranteed or promised, the employer gave every indication that the decision to promote the claimant would be based on how well the claimant did her job, and the claimant had an expectation that this would occur.



In June, 1981, the employer hired Nelson Knowles, Jr. , the son of the company's Board Chairman, to work as an assistant comptroller. Knowles, Jr. had just graduated from college and had also worked for the company part-time and during the summers while he was attending college. He was paid \$.270.00 per week to start, but through a quick succession of raises , was paid \$290.00 by June 15, 1982 and then was given an increase to \$320.00 per week on March 28, 1983. This last raise increased his salary \$25.00 per week more than what the claimant was making.

Although both the claimant and Knowles, Jr. were assistant comptrollers , their duties were different. The claimant was more responsible for the day-to-day operations of the accounting department and had supervisory responsibility over another worker. Knowles, Jr. was more involved with special projects, such as the company newsletter. Knowles, Jr. did not have a Masters Degree but attended one-day seminars at the company's expense.

When the claimant learned that Knowles, Jr. 's salary was higher than hers, she went to Mr. Hall and requested an explanation. None was immediately forthcoming, but Hall said he would get back to her. Several days later, after Hall had met with others in management, including Knowles, Sr., he again met with the claimant and informed her that the company had decided to promote Knowles, Jr. to comptroller and that is why he was given a raise. Although the employer acknowledged that the claimant was also qualified to be comptroller, the employer felt that Knowles, Jr. was more qualified. The claimant was approximately six months pregnant at this time and the employer was aware of this.

Immediately following the employer's explanation, the claimant resigned from her job and subsequently filed a charge of sex discrimination against the employer with the Equal Employment Opportunity Commission (EEOC). That case was still pending as of the time of the hearing before the Board.

After the claimant quit her job, the employer continued for a time to maintain her health and disability insurance which included covering the cost of the birth of her baby several months later.

#### CONCLUSIONS OF LAW

The claimant voluntarily quit her job because she believed her employer treated her unfairly. In addition, although this was not argued by her attorney in closing, it is also apparent from her testimony and the charges she filed with the EEOC, that the claimant felt she was discriminated against on the basis of her sex.

with regard to the latter reason, the Board concludes that there is insufficient evidence that the claimant was discriminated against. Although the claimant is a female and was pregnant at the time of the promotion and the person who was promoted was a male, there is no evidence, other than the one sexually derogatory remark, which the claimant alleged Mr. Hall told her was made by someone else, to support a conclusion that she was denied the promotion on the basis of her sex.

There is however some evidence to suggest that the claimant was treated less than fairly by the employer. Although the employer did not promise the claimant to promote her to comptroller, there was an informal understanding between the claimant and her supervisor that the decision to promote would be made on the basis of merit. The Board of Appeals concludes that the decision was not made on the basis of merit.

Although the Board is not in a position to nor should it substitute its judgment for the employer's in its management decisions, the Board concludes from the objective evidence available to it that the claimant was more qualified for the promotion than Knowles, Jr., but was not promoted, and that the fact that Knowles, Jr. was the son of the Chairman of the Board was a major factor in this decision. The claimant was on the job for a longer time, and had more education and more supervisory experience than Knowles, Jr. As the Board noted in its evaluation of the evidence, the chart comparing the qualifications of both employees, submitted by the employer, was totally subjective, without any standards or objective criteria and was made up after the fact. Therefore the Board concludes that the decision not to promote the claimant was not made on the basis of merit.

Based on the above analysis, the Board concludes that the claimant's reason for quitting was not good cause, but was a substantial cause directly attributable to the actions of the employer and, therefore valid circumstances, within the meaning of §6(e) of the law.

If the Board had found substantial evidence of sex discrimination or a promise on the part of the employer to promote the claimant, it would have concluded that the claimant had good cause to resign. The question of "unfairness" is a little more complicated. A certain amount of unfairness is part and parcel of everyday existence in the working world and the person who quits a job merely on the basis of having been treated unfairly, will not necessarily be found to have either good cause or valid circumstances under the unemployment statute, depending, of course, on the degree of unfairness involved and the particular circumstances of each case.

Here, the Board concludes that the informal understanding between the parties, and the employer's lack of fair and objective standards in denying the claimant a promotion, GO constitute valid circumstances, and a minimum penalty is warranted.



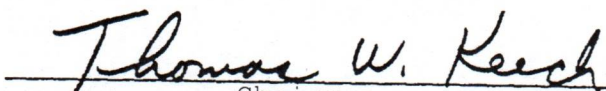
## DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning April 10, 1983 and the four weeks immediately following.

The decision of the Appeals Referee is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits and Federal Supplemental Compensation, unless the claimant has been employed after the date of the disqualification.

  
Associate Member

  
Chairman

W:K

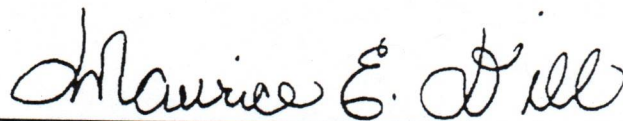
## Dissenting Opinion

The claimant's last position with the employer was assistant comptroller. In words and by conduct, she was promised a promotion to the position, of comptroller when that position became available. In anticipation of that promotion, the claimant matriculated at the University of Baltimore and earned a Master of Arts Degree in Accounting. The employer knew that the claimant had relied on the promise of the promotion, and that she was pursuing graduate courses in anticipation of the promotion. Indeed, the employer paid for the claimant's course of study and would not have paid for it if it had not been considered valuable to the company. The previous comptroller did not have a Masters Degree.

After the claimant had served as assistant comptroller for some period of time, Nelson Knowles, Jr., the son of the chairman of the board of directors of the company was hired as an assistant comptroller. He had recently earned his Bachelors Degree and the claimant assisted in his training and orientation. The claimant's duties covered the day-to-day accounting needs of the company, while Mr. Knowles' duties were limited to special projects.

After a short period of time, Knowles was given a raise which resulted in his earning more than the claimant. When the claimant asked for an explanation, company officials held a meeting, apparently, to determine what was the reasoning. At the meeting, a decision was made that the company then needed a comptroller and that Knowles was appointed to the position. The claimant was informed by a management official who was present at the meeting that her pregnancy, and the fact that she might have more children in the future, was considered at the meeting in reaching the decision to promote Knowles and not her. The employer denies that nepotism played a part in the decision to promote Knowles. The claimant quit her job because she believed that the employer discriminated against her on the basis of sex. She filed a complaint against the employer.

While I agree that "unfairness" is "part and parcel of everyday existence in the working world", it should not be "part and parcel" of these decisions. It's my opinion that the claimant had good cause to leave her work within the contemplation of §6(a) of the law because the failure to promote her was against public policy. No disqualification is warranted.



Associate Member

D

kbm

Date of Hearing: July 19, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Gary Smith, Esq.

Peter S. Saucier  
Attorney at Law  
Venable, Baetjer & Howard

Gregory R. Redding  
Attorney at Law  
Venable, Baetjer & Howard

UNEMPLOYMENT INSURANCE - BEL AIR





STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
 383-3040

THOMAS W. KEECH  
 Chairman  
 MAURICE E. DILL  
 HAZEL A. WARNICK  
 Associate Members  
 GEFFON E. LANIER  
 Appeals Counsel  
 MARY R. WOLF  
 Administrative  
 Hearings Examiner

- DECISION -

CLAIMANT: Theresa I. El-Jallad  
 DATE: May 10, 1984  
 APPEAL NO.: 01386 EP  
 S. S. NO.:  
 EMPLOYER: J. Vinton Schafer & Sons, Inc. 22  
 Attn: George A. Hall, Exec. Vice President  
 APPELLANT: Employer

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 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON May 25, 1984

- APPEARANCES -

FOR THE CLAIMANT:

Present, . Represented by  
 Gary Smith, Esq.

FOR THE EMPLOYER:

Represented by  
 George Hall,  
 Vice President &  
 Gregory Redding, Esq.

EVALUATION OF EVIDENCE

The claimant was an assistant controller for J. Vinton Schafer & Sons, Inc. The company also employed a second assistant controller, Nelson Knowles, the president's son. The senior Mr. Knowles is no longer president of the company. At the time he was president, Mr. Knowles, Sr. did not have controlling authority in the corporation or in policy management. Mr. Knowles, Jr. had a Bachelor's Degree in accounting, and he had considerable experience in accounting when he came to the company. When hired, the claimant already had a Bachelor's

Degree with some accounting experience, and after about five months of employment, the employer agreed to pay educational expenses of the claimant as she earned a Master's Degree in accounting. During the time the claimant was enrolled in school, her earnings, including college expenses, exceeded the salary of Nelson Knowles. The claimant continued to get raises periodically until January 1, 1983 she was earning \$295.00 per week. The claimant believed that she was being groomed for the controllership of this company. However, nothing was spelled out in writing, nor was there a specific verbal promise that she would be controller eventually. Subsequently, on or about March 28, 1983, Nelson Knowles was unofficially made controller of the company and raised to \$320.00 per week. On April 8, 1983, the claimant asked for an explanation as to why she had not been selected. A discussion was held between the claimant and officials of the company on April 12, 1983, and it was concluded that both she and Nelson Knowles were equally competent in the performance of duties but that the company felt that Mr. Knowles was better qualified to be controller based upon performance evaluations .

The performance evaluations indicated that Mr. Knowles was inclined to, and had done extra work and contributed more to the company on his own initiative than had the claimant. For this reason, he was promoted rather than she.

The claimant then concluded that she had been discriminated against based on sex and because of her pregnancy and she filed a complaint with the Equal Employment Opportunity Commission.

This year, around February 1984, the employer, in an effort to compromise the complaint against it, offered the claimant a position as an assistant controller in another of its companies at a pay rate of \$320,00 per week, but not in the position of a controller, 'only that of assistant controller. The claimant has declined that offer, believing that it would jeopardize her action against the employer in the E.O.C. matter.

#### FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Bel Air, effective January 1, 1984.

The claimant had been employed by J. Vinton Schafer & Sons, Inc. from August 1980 until April 12, 1983 in a last position as assistant controller. When hired, the claimant was accounts payable clerk and had been promoted to the position of the assistant controller in November 1980. Initially, the claimant's pay rate was \$255.00 per week and had gradually increased to \$295.00 per week at the time that she voluntarily left the job



in April 1983. On or about January 1, 1981, the employer began contributing the claimant's college expenses so that she could earn a Master's Degree in accounting. The employer's contributions amounted to about \$23.00 per week. In June 1981, the employer hired Nelson Knowles, the son of it's president, as an assistant controller at a pay rate somewhat less than that which the claimant was earning. However, soon Nelson Knowles was rapidly raised to \$290.00 per week by June 1982.

The employer found both the claimant and Nelson Knowles to be equally competent in their duties, "and each excelled as assistant controller. But, based upon performance evaluations, the employer determined that the claimant was not giving as much to the job as Mr. Knowles was doing. Mr. Knowles was taking certain initiative in contributing more than he had to to his job. Finally, when a choice had to be made between two equally competent persons for promotion to the controllership, the employer chose Mr. Knowles, rather than Mrs. El-Jallad.

The Appeals Referee must find as fact that the employer did not discriminate against the claimant for reasons of sex. The employer offered the controllership to the person who had proven excellence for the job, based upon his greater contribution to the company. The claimant was not denied the promotion, because she was pregnant at the time.

#### CONCLUSIONS OF LAW

The unemployment insurance Law requires the payment of unemployment insurance benefits to those persons who are temporarily unemployed through no fault of her own and without a cause directly attributable to, arising from, or connected with the condition-s of employment or actions of the employer. The facts disclose that as' between two competent accountants, one male and one female, each of whom was doing equally competent work, the evidence discloses that Mr. Knowles was producing a greater quantity of quality work for the firm and based on this, he was promoted. The claimant's position was not in jeopardy at the time, and she did not have to leave the job when she did. The actions of the employer, based upon the evidence presented, does not appear to have been unfair or arbitrary in the manner in which it promoted Nelson Knowles to the controllership. Additionally, it is noted that recently the company offered to reinstate the claimant to the position of assistant controller at a pay rate of \$320.00 per week, or about \$20.00 per week greater than that which she had been earning when she quit.

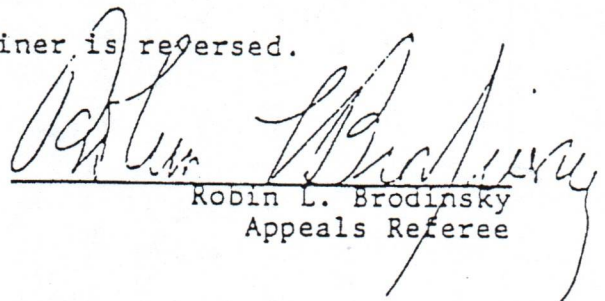
Accordingly, it is concluded that the cause of the claimant's unemployment was due to leaving work voluntarily, for a cause not directly attributable to, arising from, or connected with the conditions of employment or actions of the employer, and therefore, does not constitute "good cause" within the meaning of the Law.

Although Mr. Knowles was given a raise of approximately \$20.00 per week more than that which the claimant was earning, it must be remembered that the employer was contributing \$23.00 per week for approximately two years to the claimant, so that she could earn her Master's Degree. There is insufficient evidence to show that the employer treated the claimant in a disparate manner or a discriminatory manner, and the Appeals Referee is unable to find or conclude that there was a substantial cause attributable to the actions of the employer sufficient to find any "valid circumstance" for the claimant's voluntary separation as provided by Statute nor has there been evidence introduced to show that the claimant had necessitous or compelling reasons to leave the job or had no reasonable alternative but to do so. For this reason, the Appeals Referee must conclude that the claimant, has failed to show compelling reasons to leave her job, and her unemployment was due to leaving work voluntarily, without good cause for which the maximum disqualification as permitted by Statute must be imposed.

DECISION

It is held that the claimant's unemployment was due to leaving I work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning April 10, 1983 and until the claimant becomes employed and earns at least ten times her weekly benefit amount (\$1,650.00) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is reversed.

  
Robin L. Brodinsky  
Appeals Referee



-- 5 -- Appeal No. 01386 EP

Date of hearing: April 11, 1984  
jlt  
(2723-Haberkam)

Copies mailed to:  
Claimant  
Employer  
Unemployment Insurance - Bel Air  
  
Garv Smith, Esq.

Donald Danneman, Esq.