

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

Decision No.: 812-BR-92
Date: May 18, 1992
Appeal No.: 9203648
S. S. No.:

Claimant: Dennis L. Tillery

Employer: Maryland News Dist. Co.

L. O. No.: 1

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article and whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 8-903 of the Labor and Employment Article.

— 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

June 17, 1992

— 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 following findings of fact are made based upon the testimony taken at the hearing. The claimant returned from a medical leave of absence. The medical leave was allegedly due to an injury suffered at work. Upon his return to work, however, the claimant complained that he could not perform the heavy work.

On January 3, 1992, the claimant stated that he could not do the work. He was told to go home on unpaid sick leave until he was able to work. (Presumably, if his injury was work-related, he would be covered by Workers' Compensation.) Although the claimant did not contact the employer for a month afterward, the employer still considers him to be an employee who is on an unpaid leave of absence for medical reasons. The claimant remained disabled up until at least April 1, 1992.

The Board concludes that the claimant was discharged. Being placed on an involuntary, unpaid leave of absence due to a medical disability is the full equivalent of a discharge -- for unemployment insurance purposes. Also, the discharge was not for misconduct, as the claimant's medical problem does not qualify as misconduct.

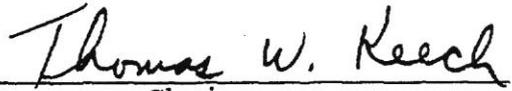
The claimant, however, is not able to work. This reason disqualifies him under Section 8-903 of the law. (The Board notes that the hearing notice informed the claimant that the ability to work was an issue that might be reached at the hearing.) The claimant will remain disqualified as long as he is not able to work.

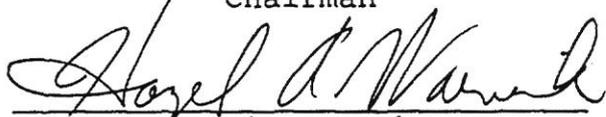
DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 8-1002 or 8-1003 of the Labor and Employment Article. No disqualification is imposed based upon his separation from employment with Maryland News Distributing Company.

The claimant was not able to work within the meaning of Section 8-903 of the Labor and Employment Article. He is disqualified from benefits from November 11, 1991 through April 1, 1992, and until he provides evidence to the local office that he is able to work.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:H

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Mailed 3/16/92

Date:

Claimant:

Dennis L. Tillery

Appeal No.:

9203648

S. S. No.:

Employer:

Maryland News Dist. Co.

L.O. No.:

01

Appellant:

EMPLOYER

Issue:

Whether the claimant was discharged for misconduct connected with the work within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT. OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET. BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

March 31, 1992

NOTICE: APPEALS FILED BY MAILING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

NOT PRESENT

FOR THE EMPLOYER:

Represented by
Gerald Seidl, Credit
Manager/Personnel
Director; and Gayle
Turek, ADP

FINDINGS OF FACT

The claimant was employed from January 4, 1991 until January 3, 1992 with the Maryland News Distribution Company as a warehouseman, receiving a salary of \$5.60 an hour.

In September, 1991, the claimant suffered an injury at work for which he filed a Workmen's Compensation claim. He obtained a disability certificate from his physician, Dr. Young, and was out of work from September 26, 1991 until December 3, 1991 (employer's Exhibit #1).

Although Dr. Young released the claimant to work after December 3, 1991, the claimant complained about the lifting required on the job each week. On January 3, 1992, he complained about his duties. Even though different employees were rotated around, he did not think it was fair because of the heavy lifting which made him tired. The claimant was essentially told to return home and stay there until he could bring in a doctor's note establishing that he could do full duty work.

For one month, the employer did not hear from the claimant. Then on February 5, 1992, the claimant mailed a second doctor's slip to the employer, in which Dr. Young indicated that the claimant was totally incapacitated from January 3, 1992 until April 1, 1992 (employer's Exhibit #2).

At this point, the claimant is on a leave of absence status and can return to his job once he brings in a medical release.

The claimant was not present at the appeal hearing.

The employer argued that it was inappropriate to have a determination on job separation, and that this case constitutes neither a voluntary quit, nor a discharge.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1001(a), (b) provides no disqualification from unemployment insurance benefits where a claimant leaves employment with-good cause attributable to the actions of the employer or the conditions of employment. The facts established in the instant case will support a finding that the claimant's leaving the employment was for good cause within the meaning of Title 8, Section 1001 (a)(b).

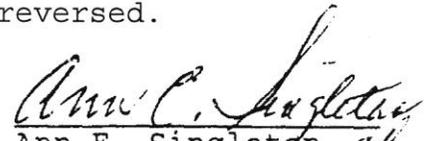
Health problems are considered to be connected with the work if they result from an injury which occurred at work, or were caused by the work. The Statute imposes an evidentiary requirement of anyone who left the job because of alleged health reasons. The Statute requires evidence from a physician, hospital or health treatment source verifying that health problem.

In the instant case, such written evidence was provided. The employer's offer of an extended leave of absence without pay, is not considered a reasonable alternative for showing valid circumstances. It is concluded, therefore, that the claimant voluntarily quit his job with good cause due to the injury he received at work.

DECISION

The claimant left work voluntarily, but with good cause, within the meaning of Title 8, Section 1001 of the Maryland Code, Labor and Employment Article. No disqualification is imposed, based on his separation from employment with Maryland News Distribution. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.


Ann E. Singleton
Hearing Examiner

Date of Hearing: 3/9/92
Specialist ID: 01062
cd/CASSETTE IN FILE

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Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

Gayle Gray Turek