

 **Maryland**
Department of Economic &
Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032*

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

— DECISION —

	Decision No.:	838-BH-90
	Date:	August 22, 1990
Claimant: Thomas Shaffer	Appeal No.:	9003821
	S. S. No.:	
Employer: Daniel L. McHenry	L. O. No.:	2
	Appellant:	EMPLOYER

Issue: Whether the claimant left 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 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.

September 21, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Thomas Shaffer, Claimant

FOR THE EMPLOYER:

Daniel McHenry,
Joanne McHenry

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.

It is uncontested in this case that the claimant had a pre-existing problem with his left knee and had had surgery on it prior to coming back to work for this employer towards the end of 1987. He also had some tentative plans to have further knee surgery on his right knee within a few months after coming back to work for this employer, but this did not occur. It is also uncontested that the claimant, while attempting to step from a wheelbarrow into a truck, slipped and hurt his left knee to some degree on April 3, 1989. It is not contested that he visited the doctor at least two times between April 3, 1989 and his last day of work, October 19, 1989. It is uncontested that, except for these visits to the doctor, the claimant missed no time from work between April 3, 1989 and October 19, 1989.

The contested issues in this case are whether the injury which took place on April 3, 1989 had any significant effect on the claimant's work ability; whether there was a significant injury to his back which resulted in problems in both of his legs; and, if there was a significant injury to his back, whether that injury was caused by the accident of April 3, 1989 or was otherwise caused by the employment.

FINDINGS OF FACT

The claimant had a previous period of employment for this employer. After working for another employer and having an operation on his left knee, he came back to work for this employer in November of 1987. He was planning to have corrective surgery also done on his right knee within a short period of time, but did not do so, at least in part because of a dispute with the employer over who was going to pay for it.

On April 3, 1989, the claimant stepped from a wheelbarrow to the back of a truck. In doing so, the wheelbarrow overturned, and the claimant fell onto his hip. He hurt his knee, but not in any significant way. He continued to work at this job, which occasionally required heavy lifting, from April 3 until his last day of work, October 19.

On October 19, he informed the employer that he was having back problems and that he was going to see the doctor. He did not return to work.

The accident of April 3 did not substantially increase the claimant's work limitations, nor did it stop him from performing on a regular schedule of work which included sometimes very heavy work. The Board finds as a fact that the accident of April 3 did not contribute to any back problem. The claimant has not proven, and the Board will not find as a fact, that he did suffer from a severe back problem in October of 1989.

CONCLUSIONS OF LAW

The slip and fall which the claimant experienced on April 3 was not a significant cause of any of his medical problems. There is no evidence that any other condition of employment caused the medical problem. Therefore, the claimant's reason for quitting cannot be said to be "good cause" within the meaning of Section 6(a) of the law, as it is not connected with the conditions of employment.

The Board concludes that the claimant voluntarily left his job. When he left the employment on October 19, 1989 without informing his employer thereafter of any intention of his to remain employed, the claimant effectively abandoned his job. Even if the claimant were severely injured (a fact which the Board did not find), it would have been incumbent on him to notify the employer of why he was out, what his prognosis was and when he reasonably could expect to return to work. The claimant appears to have simply abandoned his job instead. Since the claimant voluntarily left his job, the burden is on him to show that he had "good cause" or "valid circumstances" for leaving. For the reasons stated above, his reason for leaving does not amount to good cause.

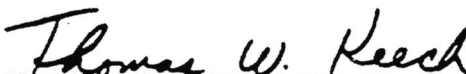
The more-difficult question is whether the claimant had valid circumstances for leaving the employment. Personal medical reasons, even if not related to the employment, can constitute valid circumstances if they are a necessitous or compelling reason for leaving the employment. The Board, however, has found that there was no serious impairment to the claimant's back, and no impairment to his left knee any greater than that he had suffered for years. In making the determination that there was no serious impairment to the claimant's back, the Board is aware that the claimant does have some medical documentation that he suffers from "low back syndrome." (Claimant's Exhibit 1.) The Board notes, however, that the

claimant, without benefit of any but the most conservative medical treatment, was declared to be able to work at restricted activities as of February 21, 1990. The claimant himself at other times has declared himself to be able to return to the full range of jobs he previously occupied. The claimant was working his job, which included heavy work, continuously up until his last date of work without any noticeable detriment -- or, in fact, without any noticeable increase in complaints. Considering all of this information, the Board has found that the claimant did not have any substantial injury to his back as of the time he left on October 19, 1989. There has been no diagnosis of any observable and significant back injury. Even the doctor's reports appear to be based upon subjective complaints, complaints which do not match the claimant's actions and statements prior to October 19. Since there was no significant medical injury, the Board concludes that the claimant did not have a necessitous or compelling reason for leaving the employment. Therefore, he does not have valid circumstances within the meaning of Section 6(a) of the law.

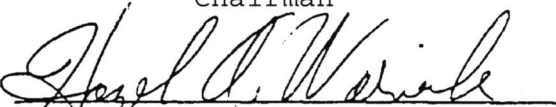
DECISION

The claimant voluntarily left his employment, without good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is denied benefits from the week beginning October 8, 1989 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,050), and thereafter becomes unemployed through no fault of his own.

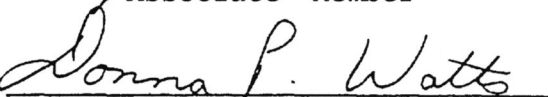
The decision of the Hearing Examiner is reversed.



Chairman



Associate Member



Associate Member

K:W:W

kbm

Date of Hearing: July 10, 1990

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CLAIMANT

EMPLOYER

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