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.: 852 -BH-92

Date: May 27, 1992

Claimant: Edita Butler

Appeal No.: 9110019

S. S. No:

Employer: Circle Graphics, Inc.
ATTN: Jay Berkowitz, Pres.

L. O. No.: 23

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 8-1002 or 8-1003 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 26, 1992

—APPEARANCES—

FOR THE CLAIMANT:

Edits Butler, Claimant
Marilyn Newhouse, Legal Aid Bureau

FOR THE EMPLOYER:

Ron Spahn, Esq.;
Paul Zink, Terry Graly & Jay Berkowitz,
Witnesses

EVALUATION OF THE 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 allowed a Board hearing in this matter specifically to allow the employer an opportunity to offer testimony of witnesses who were not allowed to testify at the prior hearing. Although two witnesses for the employer did testify, the Board notes that neither of these witnesses was able to refute the testimony of the claimant's former supervisor, Marsha Patterson. At the prior hearing, Ms. Patterson credibly testified that she was told that the claimant was going to be fired and that she so informed the claimant.

FINDINGS OF FACT

The claimant was employed with Circle Graphics, Inc. as a proofreader from approximately December 10, 1990 until she voluntarily quit on May 2, 1991. The claimant was a good employee, but there came a time when the employer felt that she was not working out. Even though they were short on proofreaders, the employer decided that he would eventually replace the claimant. However, before he did that he placed an ad in the newspaper in an attempt to hire another proofreader.

This decision was not disclosed to the claimant, nor was it intended to be until the employer was ready to replace her. However, the claimant's immediate supervisor, Marsha Patterson, was told by another supervisor that the claimant was going to be replaced, and this was confirmed to her by the owner of the company. Ms. Patterson felt that she had to let the claimant know, and so she told her she was going to be replaced.

Although the claimant occasionally made mistakes and sometimes got flustered, she was considered a good employee. After the claimant learned that she was to be fired, she collected her possessions and decided that it would be better to quit rather than to wait to be fired. The claimant was also upset because she felt that some of the employees had been laughing at her. Although this is not substantiated, the fact remains that she was told that she was about to be fired and therefore she quit her job.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant did voluntarily quit her job, but that she had good cause to do so within the meaning of Section 8-1001 of the Labor and Employment Article. Although the claimant jumped the gun a little, her reaction is certainly understandable. She was told she was definitely going to be fired by the employer, but that the employer was not officially going to tell her until she could be replaced. Rather than wait to be fired, which she reasonably believed would affect her ability to get another job, she decided to voluntarily quit. Further, the evidence shows that the claimant was a good worker but that she was being treated rather shabbily by the employer, who apparently wasn't planning to tell her until the last minute that she was being fired. Therefore, the Board concludes that the claimant had good cause connected with her work for quitting her job.

DECISION

The claimant left work voluntarily, but for good cause, within the meaning of Section 8-1001 of the Labor and Employment Article. No disqualification is imposed based on her separation from employment with Circle Graphics, Inc.

The decision of the Hearing Examiner is reversed, but the result remains the same.

Associate Member

Associate Member

Chairman

HW:W:K
kbm
Date of Hearing: April 7, 1992
COPIES MAILED TO:

CLAIMANT
EMPLOYER

Ronald L. Spahn, Esq.
Gelfman & Spahn

Legal Aid Bureau, Inc.
ATTN: Marilyn Newhouse, Esq.

UNEMPLOYMENT INSURANCE - COLUMBIA

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

—DECISION—

Date: Mailed 8/19/91

Claimant: Edita V. Butler

Appeal No.: 9110019

S S No.:

Employer: Circle Graphics, Inc.
wy

L.O. 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 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 APPEALS DIVISION ROOM 515, 110 NORTH EUTAW STREET BALTIMORE MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON September 3, 1991

—APPEARANCES—

FOR THE CLAIMANT:

Claimant - present
Represented by:
Marilyn Newhouse, Esq.
from Legal Aid
Marcia Patterson,
Subpoenaed Witness/Former Supervisor
of the Claimant

FOR THE EMPLOYER:

Jay Berkowitz,
President
Ronald Spahn, Esq.

FINDINGS OF FACT

The claimant was employed between December 10, 1990 and May 2, 1991. She worked full-time earning $10.00 an hour as a proofreader for a typesetting company.

The claimant was informed on May 3, 1931, by her supervisor at the time, Ms. Marcia Patterson, that it had come to Ms. Patterson's attention from Annette Hewell, the assistant to t production manager, that the employer, Mr. Berkowitz, had placed a classified ad in the Sunday Post to replace the claimant, who would not be told until someone had been hired to take her place. She was advised that this would occur within the next two to three weeks.

The credible evidence, dense indicates that the week prior to May 3, 1991, in the lunchroom, Jay, Berkowitz told Ms. Patterson and Ms. Howell, that the claimant was "not working out" and that he planned to run the ad. He calculated that he would take a week to find someone and two weeks for that individual, to give notice where they were working. At, no time did he deny to Ms. Patterson that he intended to replace to replace the claimant.

Mr. Berkowitz was non-specific as to what he meant by the claimant not working out. It is undisputed that in April 1991, the claimant was counseled verbally by Ms. Patterson, as were all proofreaders, because the claimant and the others were overworked, and not given enough time to review specifications in order to comply with the schedule under which they were forced to produce. According to Ms. Patterson, a very credible witness, everyone made the sort of errors for which the claimant was counseled verbally, and not in writing.

After her telephone conversation with Ms. Patterson, the claimant immediately appeared at work to collect her personal possessions and when it was discovered by Mr. Berkowitz, later in the day that she had left, his reaction was that it had saved him the trouble of firing her.

CONCLUSIONS OF LAW

Article 95A, Section 6(a) provides that an individual is disqualified for benefits when his/her unemployment is due to leaving work voluntarily. This section of the Law has been interpreted by the Court of Appeals in the case of Allen v. CORE Target City Youth Program (275 Md. 69), and in that case the Court said: "As we see it, the phrase 'due to leaving work voluntarily' has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment."

In the Present case, the claimant did net initiate the separation. Rather, the decision to replace the claimant was made by Mr. Berkowitz, who, for unknown reasons, did not announce his intentions directly to her. However, his plan to replace her, that is, to discharge her from the employment, was communicated to her directly by her supervisor. Upon acknowledgement of this information, the claimant took her possessions from the place of employment and left. It cannot be said that the seperation was triggered by the claimant's on choice or free will.

Article 95A, Section 6(b) provides for a disqualification from benefits where an employee is discharged for actions which constitute (1) a deliberate and willful disregard of standards which the employer has a right to expect or (2) a series of violations of employment rules which demonstrate a regular and wanton disregard of the employee's obligations to the employer. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of gross misconduct within the meaning of the Statute.

Article 95A, Section 6(c) provides for disqualification from benefits where benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during hours of Text employment or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

DECISION

It is held that the claimant was discharged but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from her employment with Circle Graphics, Inc. The claimant may contact the Local Office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is hereby reversed.

Judy-Lynn Goldenberg

Judy-Lynn Goldenberg
Hearing Examiner

Date of Hearing: August 2, 1991
1r;Specialist ID: 23997
Cassette No: 7920
Copies mailed on August 19, 1991: to:

Claimant
Employer
Unemployment Insurance - Columbia (MABS)

Ronald L. Spahn, Esquire

Marilyn Newhouse, Esquire
Staff Attorney
Legal Aid Bureau, Inc.