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.: 934-BR-89

Date: October 26, 1989

Claimant: Mary A. Byrd

Appeal No.: 8909681

S. S. No.:

Employer: Jonathan Enterprises, Inc.
ATTN: Maryanne Hagarty, Mgr.
9 Hopkins Plaza
Baltimore, MD 21201

L. O. No.: 1

Appellant: CLAIMANT

Issue: Whether the claimant was discharged for misconduct, connected with the work, within the meaning of Section 6(c) 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 MAYBE 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 November 25, 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.

The claimant refused an order of her employer to return for a one hour shift at the end of the work day. She had been informed that she would be fired if she so refused. When she refused, she was fired. The Hearing Examiner was incorrect in interpreting this situation as a voluntary quit. As the Court of Appeals said in Allen v. C.O.R.E. Target City Youth Program, 275 Md. 69, 338 A.2d, 237 (1975), "the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment" before a situation can be characterized as a voluntary quit. This case is actually very similar to the Allen case, in that the employee refused an order of the employer, knowing that the refusal would result in discharge. The Court of Appeals was very clear in stating that such a situation amounts to a discharge.

The claimant was a waitress paid $2.01 per hour. She was required to work a fragmented shift of up to five separate hourly periods per day. She was first on the clock at 11:00 a.m., but she actually had to report to work by 10:30 a.m. and was not paid for the first half hour. The first period ended at 2:30 p.m.; then, on occasion, the claimant had to return to work at 3:00 p.m. and perform work selling cookies for the employer for a half hour without pay. The claimant then returned back to paid employment at 4:00 p.m. and worked until 8:30 p.m. Then, from 9:00 to 9:30 p.m., she was required to sell cookies for the employer without pay. She then was required to return to paid work at 10:00 p.m. and work until 11:00 p.m.

The claimant had worked a similar schedule on her last day of work. She had also worked forty-eight hours already during that work week. She refused to return to work for the 10:00 to 11:00 p.m. shift and was discharged for that.

Under all of the circumstances, the Board concludes that the employer's order for her to return at 10:00 p.m. was unreasonable, and her failure to do so does not constitute any type of misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law.

The Board notes that, if the claimant had voluntarily quit, the conditions of employment would have constituted "good cause" as that term is used in Section 6(a) of the law.

DECISION

The claimant was discharged, but not for 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 on her separation from employment with Jonathan Enterprises, Inc. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Associate Member

K:
kmb
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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

Maryland
Department of Economic & Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

(301) 333-5040

- DECISION -

Claimant: Mary A. Byrd

Date: Mailed: 8/30/89

Appeal No.: 8909681

S. S. No.:

Employer: Jonathan Enterprises, Inc.

L.O. No.: 001

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 September 14, 1989

– APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Maryanne Hagarty, Manager

FINDINGS OF FACT

The claimant entered the employ of Jonathan Enterprises, Inc., March 28, 1988, last day of work April 29, 1989. Last position held was that of waitress, last rate of pay $2.01 per hour, plus tips.

The claimant worked a varied shift, covering lunch, and then a pre-theatre shift 4:00 p.m. to 8:00 p.m. Additionally, the claimant was expected to return to the after theatre shift at 10:00 p.m.

The claimant did not want to work the shift beginning at 10:00 p.m. because she made. very little money. The claimant was informed by Jonathan Sourby, that by not returning to her scheduled shift would result in her quitting her job.

The claimant did not return to work to complete her normal shift. She has secured other full-time employment as of July 28, 1989.

CONCLUSIONS OF LAW

It is concluded from the evidence that the claimant knew by not returning to her regular shift that she paved the way for losing her job.

Therefore, the claimant voluntarily quit her job, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. There are no serious, valid circumstances present to warrant a period of disqualification less than the maximum allowed by Law.

DECISION

The unemployment of the claimant is due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

Benefits are denied from the week beginning April 23, 1989 until the claimant becomes re-employed and earns at least ten times her weekly benefit amount ($1,430), and thereafter, becomes unemployed through no fault of her own.

Alexander C. Cushing
Alexander C. Cushing
Hearing Examiner

Date of Hearing: 8/28/89
rch/Specialist ID: 01062
Cassette Number: 7544
Copies mailed on 8/30/89 to:
Claimant
Employer
Unemployment Insurance - Baltimore (MABS)