

 **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.: 950-BH-89

Date: October 27 , 1989

Claimant: Lillian D. Alexander

Appeal No.: 8904860

S. S. No.:

Employer: Helping Hand, Inc.
ATTN: M. Satterthwaite, Pres.

L. O. No.: 45

Appellant: CLAIMANT

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 or whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or 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 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 AT MIDNIGHT ON November 26, 1989

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Marian Satterthwaite -
President
Yevola Peters -
Board Member

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 found the employer's witnesses at the Board hearing to be completely credible with respect to both their sincerity and their knowledge of the facts testified to.

FINDINGS OF FACT

The claimant was employed as an executive director for the employer, Helping Hand, Inc., from June 10, 1985 through February 3, 1989. She earned \$35,000.00 per year at the end of her employment. The claimant held the highest paid and most responsible position of all the employees of this organization, which is a charitable organization. Her responsibilities included keeping and preparing financial reports and records and reporting the financial situation accurately to the employer's board.

The claimant made an agreement with the employer that she would install a car phone at a cost of approximately \$1,000, pay the bill through the employer and then reimburse the employer through private funds. Although the claimant had the car phone installed, and although the bill was sent to the employer, the claimant did not reimburse the employer from her own funds.

The claimant completed the payroll but failed to pay the withheld amount of Federal income tax to the Internal Revenue Service during 1987 and 1988. A tax bill for \$8,877.00 was thus due and not paid.

The claimant failed to pay unemployment insurance taxes for the third and fourth quarter of 1988.

As a result of the claimant's negligence, the employer was disqualified from receiving a grant from the Federal Emergency Management Authority, since the claimant failed to submit a required report.

With respect to the employer's primary source of income, the United Way, the claimant failed to submit several reports due. As a direct result, the employer lost its status as a United Way Agency and was cut off from any further grant funds from December of 1988 and January and February of 1989. This also caused an additional 1 1/2 month delay in reestablishing the grant. As a result of the claimant's cumulative failure to pay tax bills and prepare financial reports, the employer was forced to close down entirely for six months and to stop taking people into its shelter for homeless persons until July 15, 1989.

The claimant also neglected to pay some ordinary bills, such as a bill for a refrigerator purchased by the employer, payment for which was delayed to such an extent that the employer had to pay three late charges.

The claimant had regular monthly meetings with the Board of Directors. At these meetings, she did not reveal that she had failed to pay federal or state payroll taxes and that she had failed to complete the necessary financial reports to keep the United Way grant in order. Eventually, this information came to the board, and the board questioned the claimant about that. The claimant had no sufficient excuse for failing to complete these reports or pay these taxes.

As the pressure on the claimant mounted, the claimant, on January 3, 1989, submitted a resignation letter effective April 14, 1989. The Board of Directors, however, rejected this proposal and informed the claimant that they would accept her resignation effective February 3, 1989. The claimant's only choice was to resign on February 3, 1989 or to be discharged on that date. The claimant cleaned out her office and left the premises on that date and was not seen again, though she never officially resigned on that date.

CONCLUSIONS OF LAW

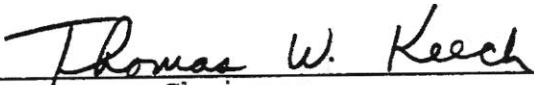
The Board concludes that the claimant was discharged. Her attempted resignation letter, which was not to be effective until four months in the future, was rejected by the Board because the Board did not want to retain her services for that long. She was then told to change her effective date of resignation to February 3rd or to be discharged. The claimant did not change her effective date of resignation, but she left the job on February 3rd. Under these circumstances, the Board concludes that the claimant was discharged.

The employer in this case has clearly met the burden of showing that the claimant's discharge was for gross misconduct, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. The claimant's failure to complete necessary financial reports, together with her failure to inform the Board of this fact, was clearly a deliberate violation of standards the employer has a right to expect, showing a gross disregard for the employer's interest. This conduct thus meets the definition of gross misconduct. The same can be said of the claimant's failure to pay to the Internal Revenue Service the payroll taxes withheld and the failure to pay unemployment insurance taxes. The claimant was in a position of ultimate responsibility for the completion of these crucial items, and her repeated failure to do so is clearly gross misconduct. The failure to pay other items on time is additional misconduct. The failure to repay the employer for a personal item (the car telephone) after agreeing to do so, is additional gross misconduct.


DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning January 29, 1989 and until she becomes reemployed, earns at least ten times her weekly benefit amount, and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed.


Chairman


Associate Member


Associate Member

K:H:D

kmb

DATE OF HEARING: August 22, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



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: Lillian D. Alexander
Employer: Helping Hand, Inc.

Date: 8904860
Decision No.:
S. S. No.:
L.O. No.: 45
Appellant: Claimant

Mailed: 5/19/89

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 MAYBE 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 EXPIRES AT MIDNIGHT ON 6/5/89

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present
Mary Jackson, Secretary
to the Board/Witness

FOR THE EMPLOYER:

Marian
Satterthwaite,
President of the
Board
Josephine Schrimpe,
Vice President

FINDINGS OF FACT

The claimant was employed by Helping Hand, Inc. from June 10, 1985 until February 3, 1989. At the time of her separation from the employment, the claimant was the Director.

The claimant submitted a letter of resignation to be effective April 14, 1989, on January 3, 1989. The claimant gave no reason

for her resignation, but timed her date of separation to coincide with the end of the current legislative session. The claimant also figured that she would get vacation pay which would run through the end of June 1989. The claimant simply wanted to pursue another course of endeavor.

Part of the claimant's duties involved the financial management of the employer, who was experiencing problems. During October 1988, the vice President of the Board took over the financial affairs of the Agency from the claimant. Because of the financial and other problems, required tax returns had not been filed or taxes paid to both the IRS and the State of Maryland incurring penalties set, in some cases, exceeded the taxes due.

After turning over the financial affairs to the Vice President the claimant was asked questions concerning those same finances. The claimant gave some satisfactory answers, but in some cases, did not. The Board found that there were no bills that could be checked for telephone services and, in other cases, unpaid bills and no bank balances available when requested. The employer thought that the claimant had not gotten around to these matters and made no accusations. Because of these problems, United Way and another organization had cut off funds to the employer. Other than the financial area, the employer was very pleased with the claimant's performance.

The employer, at a board meeting on February 2, 1989, failed to pass on a letter to remove the claimant. The Board did, however, decide to give the claimant an opportunity to resign and to ask the claimant to effect her letter of resignation immediately.

The claimant really had no choice, but to do so.

CONCLUSIONS OF LAW

Based upon the testimony presented at the appeals hearing, it is concluded that the claimant submitted her resignation because of the financial problems the employer was experiencing. The claimant had been asked to turn over the financial affairs to a member of the Board and was unable to answer questions posed to her.

The claimant's resignation was to coincide with the end of the current legislative session. The employer accelerated the claimant's leaving by asking her to effect her letter of resignation immediately. This, also, was done because of the financial affairs of the employer. Thus, it is concluded by the Hearing Examiner that the claimant was terminated by the employer

for her inability to manage the financial affairs of the employer. Because the financial affairs were under the complete control of the claimant during the course of her employment, these financial affairs must be considered not only as a reason for separation from the employment but, also must be considered as to whether they amount to misconduct as contemplated by the Statute.


Section 6(b) of the Law, requires the denial of benefits until re-employment when it is held that an individual is discharged for gross misconduct connected with her work. "Gross misconduct" is defined in the Act as a deliberate and willful disregard of the standards of behavior which the employer had a right to expect, showing a gross indifference to the employer's interest, or a series of repeated violations of employment rules, proving that the employee has regularly and-wantonly disregarded her obligations. A lesser disqualification is imposed when an individual is discharged for misconduct connected with her work. "Misconduct" means a substantial deviation from the proper standards of conduct. Both terms connote the element of a deliberate or willful wrongdoing.

Here, the claimant was the Director of the Organization and, therefore, charged with the financial affairs. The claimant was unable to accomplish the task in this area of her job and failed to seek help until it was out of control. This failure to seek help amounts to gross misconduct within the meaning of the Law, because her actions were deliberate and willful insofar as the Statute is concerned. Therefore, the determination of the Claims Examiner which found that the claimant had quit her employment, without good cause, will be reversed to reflect a separation from the employment for gross misconduct, within the meaning of Section 6(b) of the Law.

DECISION

The claimant was separated from her employment, but for acts which constitute misconduct within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning January 29, 1989 and until the claimant becomes re-employed, earns at least ten times her weekly benefit amount (\$2,050) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is reversed.



Hearing Examiner

Date of hearing: 5/15/89

rc

(4177 & 4178)-Specialist ID: 45532

Copies mailed on 5/19/89 to:

Claimant

Employer

Unemployment Insurance - Northwest - MABS