

 **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.:	957-BH-89
	Date:	November 2, 1989
Claimant: George C. Cox, Jr.	Appeal No.:	8905573
	S. S. No.:	
Employer: B. Green & CO., Inc.	L.O. No.:	1
	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; whether there is good cause to reopen this dismissed case within the meaning of COMAR 24.02.06.02(N).

—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.

December 2, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

George C. Cox, Jr., Claimant

John T. McGucken, Legal Counsel, D.E.E.D.

FOR THE EMPLOYER:

Jan Squitieri, Dir.
of Human Resources

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.

PROCEDURAL STATEMENT

There are two issues involved in this case: (1) whether or not the claimant has good cause for his case to be reopened within the meaning of COMAR 24.02.06.02(N); and (2) whether or not the claimant voluntarily quit his employment without -good cause within the meaning of Section 6(a) of the law.

After becoming separated from B. Green & Company, Inc., the claimant took a new job with a company that was headquartered in St. Louis, Missouri. The claimant contacted the agency several times, explaining that he was not able to personally attend a hearing. It is inexplicable why this case was not postponed until such time as the claimant was available to attend a hearing or why this case was not scheduled for a telephonic hearing.

FINDINGS OF FACT

As to the issue of whether or not the claimant has good cause to reopen his dismissed case, the following facts are found. After being terminated from his employment with B. Green & Co., Inc., the claimant obtained employment with a company that was headquartered in St. Louis, Missouri. The claimant was required to be out of state for training except for weekends. The claimant repeatedly called the agency and asked for a telephone hearing and also sent in a letter requesting a postponement. Neither one of these requests were granted, and hearings were scheduled for May 30, 1989 and June 26, 1989. Due to being out of town for job training, the claimant was unable to attend either of these hearings, and his case was dismissed.

As to whether or not the claimant voluntarily quit his employment without good cause, the Board finds the following facts. There had been two attempted buy-outs of B. Green & Co., Inc. that were unsuccessful. The claimant and another employee of the company then attempted to buy the company out themselves. They were able to obtain financing, and in October of 1988 they were close to closing the deal. On or about October 7, Bernard Green came to the claimant and

requested that he take a leave of absence. On October 10, Benji Green, Bernard Green's son, also suggested that the claimant take a leave of absence. The claimant did so, thinking that the bid to buy out the company was going forward. In early November, in an issue of Food World Magazine, a trade publication, it was announced that the claimant was leaving the company. Upon reading this announcement, the claimant tried to contact his employers to find out what in fact was going on. He never received a satisfactory response. Therefore, on November 7, 1988, the claimant wrote a letter to Bernard Green telling him that he was assuming that his offer to buy the company was being rejected and would return to work that following Monday. The claimant was then called into a meeting with Bernard and Benji Green and told that too much had happened and that it would be in everybody's best interest if he resigned. A letter of resignation had already been prepared and was waiting only for the claimant's signature. The claimant was given an opportunity to have the letter reviewed by his lawyer, and two minor changes were made. However, the decision had been made during the first week of November that the claimant's employment was no longer desired by B. Green & Co., Inc.

The claimant signed the letter of resignation because he did not want to be fired. He did not want to have a firing on his employment record when he sought future employment. The Board finds that the claimant did not have a choice to stay on at B. Green & Co. Had he not signed the letter of resignation, he would in fact have been fired.

CONCLUSIONS OF LAW

Pursuant to COMAR 24.02.06.02(N), the Board concludes that the claimant has good cause to reopen his dismissed case. The claimant had informed the agency that he was out of town being trained for his new position and would be unable to attend the scheduled hearings in Maryland.

Based on the facts presented in this case, the Board concludes that the claimant was discharged from his employment with B. Green & Co., Inc., 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.

Upon returning from his employer's requested leave of absence, the claimant was handed a letter of resignation and asked to sign it. It is clear that the employer had no intention of allowing the claimant to return to work within the company. The employer has shown no misconduct of any kind on the part

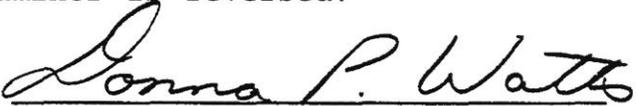
of the claimant, and the claimant clearly had no intent to resign his position with this company. The claimant's letter of November 7 establishes that the claimant intended to return to his position even though his attempt to buy out the company had proven to be unsuccessful.

DECISION

Good cause exists to reopen this dismissed case pursuant to COMAR 24.02.06.02(N).

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 his separation from employment with B. Green & Co., Inc.

The decision of the Hearing Examiner is reversed.



Associate Member



Associate Member



Chairman

DW:W:K

kbm

Date of Hearing: September 26, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer
Governor
J. Paul Ehrlich
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201

(301) 333-5040

— DECISION —

Mailed: June 29, 1989

Date:

Claimant: George C. Cox, Jr.

Appeal No.:

8905573

S. S. No.:

Employer: B. Green & Co., Inc.

L.O. No.:

1

Appellant:

Claimant

Issue:

Whether the unemployment of claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law. Whether there is good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06.02(N).

- 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 ANY EMPLOYMENT SECURITY OFFICE OR WITH THE APPEALS DIVISION. **ROOM 515, 1100 NORTH EUTAW STREET** BALTIMORE MARYLAND 21201. EITHER IN PERSON OR BY MAIL July 14, 1983

THE PERIOD FOR FILING PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Not Present

FOR THE EMPLOYER:

Jan Squitieri,
Dir. of Human
Resources

FINDINGS OF FACT

The appellant's hearing was originally scheduled for May 30, 1989, and the appellant, having due notice of this hearing mailed to his/her last address of record, failed to appear. The appeal was dismissed for non-appearance and the appellant subsequently petitioned for re-opening of the appeal. A new hearing was set for June 26, 1989 and the appellant was gain duly notified of the hearing date at his last address of record but again failed to appear to pursue the appeal.

DECISION

It is held that for failure to appear at two consecutive appeal hearings, without good cause shown, the appellant's appeal is dismissed without right of re-opening.


Joanne M. Finegan
Hearing Examiner

Date of Hearing: June 26, 1989
bch/Specialist ID: 01063
Cassette No: 5634-89
Copies mailed on June 29, 1989 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)