



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-FJ32
- DECISION -

BOARD OF APPEALS

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HAZEL A. WARNICK
MAURICE E. DILL
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SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DECISION NO.: 1305-BR-82

DATE: September 16, 1982

APPEAL NO.: 20137

S. S. NO.:

CLAIMANT: Donald J. Lansinger

EMPLOYER: Baltimore County Fire Department
Office of Personnel

L. O. NO.: 40

APPELLANT: EMPLOYER

ISSUE Whether the Claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) of the Law; and whether the Claimant was able to work, available for work and actively seeking work within the meaning of Section 4(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 SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

October 16, 1982

-APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

The Board finds the following facts.

The Claimant worked as a CETA employee for the Baltimore County Fire Department from November 12, 1980 through March 20, 1981. He worked as a driver/messenger and was paid at a rate of \$4.10 per hour at the time of his separation.

Prior to March 20, 1981, the Employer began plans to phase out all CETA employees due to the termination of funding. The Claimant's job was set to expire on April 14, 1981.

on March 20, 1981, the Claimant was incarcerated. Through his sister, he notified the Employer that he was unable to appear for work. The incarceration lasted for approximately nine weeks, until May 27, 1981. On that date, the charges were dropped and the Claimant was released. After he was released, the Claimant did not report back to his Employer because he knew that his job funding had already expired.

CONCLUSIONS OF LAW

In making its conclusions about the effect of the Claimant's incarceration on this case, the Board of Appeals assumes that the Claimant is not guilty of any criminal charges for which he may have been incarcerated. This comports with the evidence presented, which tends to show that the charges were dropped on May 27, 1981. The evidence does not show any other details of the incarceration.

The Claimant cannot be said to have voluntarily left this job within the meaning of Section 5(a) of the Maryland Unemployment Insurance Law. In the case of Allen v. Core Target City Youth Program, 275 Md. 65 (1975), the Court clearly limited the usage of that section to cases in which the Claimant leaves employment of his own free will.

As we see it, the phrase "due to leaving work voluntarily" has a plain, definite and sensible meaning, free of ambiguity; it expresses a clear legislative intent that to disqualify a claimant from benefits the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment. If an employee is discharged for any reason other than perhaps for the commission of an act which the employee knowingly intended to result in his discharge, it cannot be said that his or her employment was due to "leaving work voluntarily."

Id., at. 79.

The Claimant clearly had no intention of quitting his job, nor can any intent even be inferred from his innocent incarceration.

The next question is whether or not the Claimant is guilty of misconduct within the meaning of Section 6(c) of the Law or gross misconduct within the meaning of Section 6(b) of the Law. The Claimant was not guilty of any crime. He began an extended period of absenteeism on March 20, 1981. He notified the Employer that he would be absent.

Absenteeism, of course, can be the basis for a disqualification under Section 6(b) or (c) of the Law. Watkins v Employment Security Administration, 266 Md. 223 (1972). As that case made clear, however, disqualifying absenteeism must be persistent or chronic, without excuse or notice to the Employer, and must continue in the face of warnings. In this case, there is no evidence of proper notice given to the Employer, and the Claimant clearly had an excuse in that he was incarcerated for a crime of which he was not guilty. This case does not meet the requirements set out in the Watkins case for absenteeism amounting to gross misconduct. The Board also concludes that it does not meet the requirements for misconduct within the meaning of Section 6.(c) of the Law either, primarily because the absenteeism was totally beyond the control of the Claimant and was not his fault in any sense. The Board also notes that proper notification was given to the Employer.

The Claimant, of course, was not able, available and actively seeking work within the meaning of Section 4(c) of the Law from March 20, 1981 until May 27, 1981. The Claimant will be disqualified under that section during that period.

DECISION

The Claimant was discharged, but not for gross misconduct or misconduct within the meaning of Sections 6(b) or (c) of the Maryland Unemployment Insurance Law.

The Claimant did not voluntarily quit his job within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

The decision of the Appeals Referee with regard to Section 6(c) of the Law is reversed.

The Claimant was not able and available for work within the meaning of Section 4(c) of the Law from the week beginning March 15, 1981 until the week ending May 30, 1981. He is disqualified for benefits under this section of the Law for this period.

The decision of the Appeals Referee with regard to Section 4(c) of the Law is affirmed.

Thomas W. Keesh
Chairman

Hayel A. Warner
Associate Member

Maurice E. Hill
Associate Member

K:W:D
ZVS

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE – EASTPOINT



STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
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BOARD OF APPEALS

JOHN J. KENT
 Chairman
 HENRY G. SPECTOR
 HAZEL A. WARNICK
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

GARY SMITH
 Chief Hearings Officer

- DECISION -

CLAIMANT: Donald J. Lansinger
 DATE: Nov. 5, 1981
 APPEAL NO.: 20137-EP
 S S NO.:
 Employer: Baltimore County Fire Dept.
 L. O. NO.: 40
 APPELLANT: Employer

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.

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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON November 20, 1981

- APPEARANCES -

FOR THE CLAIMANT:

Donald J. Lansinger - Claimant

FOR THE EMPLOYER:

Represented by
 Frank R. Wilson,
 Chief Administrator;
 Ann Courtney,
 Clerk III;
 Morton Klasmer,
 Director of Employment
 Relations,
 Office of Personnel

FINDINGS OF FACT

The claimant has a benefit year effective 12, 1981. His weekly benefit amount is \$93.00. The claimant was employed by the

Baltimore County Fire Department of Towson, Maryland on November 12, 1980. He was performing duties as a driver-messenger at \$4.10 per hour at the time of his separation on March 20, 1981.

The testimony reveals that the claimant no longer showed up for work after March 20, 1981 because he was incarcerated on March 22, 1981. The claimant could not call the employer but had his sister do so for him. She indicated to the employer that the claimant was not able to come to work since he was incarcerated. The-claimant remained in jail until May 27, 1981, at which time he was released.

Prior to the claimant's leaving in March, he had been told that since he was on the CETA Program, that the funds had run out and April 14, 1981 was the end of the CETA Program, and he would be let go. When he was released from jail on May 27, 1981, he did not call his employer since he knew that he would not have a job anyhow after April of 1980 due to the end of the CETA funds.

The employer indicated that the claimant was out on sick leave on March 20, 1981, but there is no indication that he was sick but that he was incarcerated.

The claimant remained unemployed from March 20, 1981 to the present.

COMMENTS

It is concluded from the testimony that the claimant did not voluntarily quit but was discharged from his employment for failure to report after March 20, 1981. Therefore, a disqualification under Section 6(c), not Section 6(a) of the Law, is warranted. There cannot be a voluntary quit in this case since the claimant did not voluntarily ask to go to jail or to be incarcerated. The determination of the Claims Examiner, under Section 6(a) of the Law, will be reversed.

The claimant was not able, available nor actively seeking full-time work from March 20, 1981 to May 27, 1981 when he was released from incarceration. There will be disqualification under Section 4(c) of the Law.

DECISION

The claimant was discharged for misconduct connected with his work within the meaning of Section 6(c) of the Law. He is disqualified from receiving benefits for the week beginning March 15, 1981 and nine weeks immediately following. The determination of the Claims Examiner, under Section 6(a), is reversed.

The claimant was not able, available nor actively seeking full-time work within the meaning of Section 4(c) of the Law. He is denied benefits from March 22, 1981 to May 27, 1981.

The employer's protest is denied.

Date of hearing: 10/26/81
cp/Johns
(9766)

Copies mailed to:

Claimant
Employer
Unemployment Insurance - Eastpoint