



DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383 - 5032

—DECISION—

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND
HARRY HUGHES
Governor

CLAIMANT: Stanley W. Smith

DECISION NO.: 359-BR-84

DATE: April 3, 1984

APPEAL NO.: 09504

S. S. NO.:

EMPLOYER: Maryland Training School for Boys
ATTN: Edward Norris

L.O. No.: 1

APPELLANT: CLAIMANT

ISSUE: Whether the claimant left work voluntarily, without good cause, within the meaning of §6(a) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

May 3, 1984

- APPEARANCE -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the ultimate decision of the Appeals Referee.

The claimant removed tools from the premises of the employer and placed them in the trunk of his car. After the tools were reported missing by another employee, someone pointed out the claimant as a suspect.

The claimant was called to his supervisor's office, where he was confronted by his supervisor and a police officer who had been called to investigate the theft. The police officer asked for permission to search the claimant's car, but the claimant replied that it was not necessary, that he had taken the tools. The claimant then produced the tools.

The supervisor then informed the claimant that charges would be placed against the claimant for his dismissal from state service and that criminal charges also would be brought. The claimant then stated that he had borrowed the tools, not stolen them. The superintendent then gave the claimant the option of resigning rather than face the personnel charges possibly leading to his dismissal. The claimant took this option and resigned.

The claimant's supervisor had no authority to fire him; the extent of his authority was to draw up charges for dismissal, to be adjudicated by the Department of Personnel. The claimant was aware, or should have been aware of this, since he was told this, since he had been employed five years and since he was familiar with other personnel procedures such as grievances.

In Brewington v. Department of Social Services, 1500-BH-82, the Board of Appeals affirmed a policy enunciated in Kulis v. State of Maryland, 694-BH-81, that an employee has voluntarily quit his employment, without good cause, when he resigns rather than face charges possibly leading to discharge. In this case, the evidence shows that the superintendent of the institution did not even have the authority to fire the claimant, see, Article 64A, §33, and the claimant knew it. This case clearly falls under the parameters of the Brewington and Kulis cases, and the same result will be reached.

In the Brewington case, the Board noted that an exception to this rule might be found where an employer intentionally brought personnel charges against an employee in bad faith or for the purposes of harassment. The burden would be on a claimant to show such bad faith or harassment, and none is shown in this case.

The question arises in this case as to whether the mere presence of a police officer and a statement that criminal charges will be filed is harassment. The Board concludes that it is not. An employer is entitled to protect itself from criminal activity by the use of the criminal justice system and, absent any bad faith shown, the use of the criminal justice system is not evidence of harassment and is not an element of "good cause" or "valid circumstances" under §6(a) of the Maryland Unemployment Insurance Law.

DECISION

The claimant left work voluntarily, without good cause, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning July 24, 1983 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,600.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is affirmed.

K:W
kmb

COPIES MAILED TO:

CLAIM-ANT

EMPLOYER

Richard Neuworth, Esquire

Ms. Rebecca Warren
Department of Personnel

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

STATE OF MARYLAND
 HARRY HUGHES -
 Governor
 KALMAN R. HETTLEMAN
 Secretary

BOARD OF APPEALS

THOMAS W. KEECH
 Chairman

MAURICE E. DILL
 HAZEL A. WARNICK
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

MARK R. WOLF
 Administrative
 Hearings Examiner

- DECISION -

LAIMANT: Stanley W. Smith
 DATE: Dec. 1, 1983
 APPEAL NO.: 09504
 S. S. NO.:
 EMPLOYER: Maryland Training School for Boys
 L. O. NO.: 1
 APPELLANT: Claimant

SUE: 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 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 Dec. 16, 1983

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present, Represented by
 Richard Neuworth, Esq. &
 & John Sippio, Youth
 Supervisor III & Sarah Scott,
 Youth Supervisor II

Represented by
 Rebecca Warren,
 Personnel,
 Accompanied
 by Edward Norris,
 Asst. Superintendent

FINDINGS OF FACT

The claimant began employment January 10, 1979" as a youth supervisor 11 earning a then current salary of \$611.72 bi-weekly. The claimant's last day in this employment was July 26, 1983.

The claimant had borrowed equipment from the employer from time to time. According to the claimant, there was no policy of borrowing or lending equipment, however, there could be no trading or borrowing equipment or any other items from students at the Maryland Training School. On July 26, 1983, the claimant borrowed a pair of pliers and an adjustable wrench. These tools were to be used to repair his son's bicycle. These tools were carried openly to his vehicle. He was seen carrying these tools by another employee. Law Enforcement personnel were brought in and the claimant was questioned about the tools. The claimant later admitted taking the tools and was given a chance to resign or face charges for dismissal.

CONCLUSIONS OF LAW

The preponderance of the credible evidence demonstrates that the claimant formulated the requisite intent to separate from the employment voluntarily, without good cause, attributable to the actions of the employer or the conditions of the employment within the meaning of Article 95A, Section 6(a) of the Maryland Unemployment Insurance Law.

The requisite intent to separate from the employment voluntarily, without good cause is shown because the claimant resigned prior to exhaustion of his administrative remedies through the Maryland Department of Personnel. Furthermore, the claimant did know of the grievance procedure through the Maryland Department of Personnel because he was provided a manual about what he was permitted and was not permitted to do and possible avenues of appeal should problems arise.

DECISION

The claimant left his employment voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning July 24, 1983, and until he becomes reemployed, and earns at least ten times his weekly benefit amount (\$1,600.00) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.



Willie E. Walker
Appeals Referee J.F.

-3- Appeal No. 09504

Date of hearing: Oct. 28, 1983

jlt

(8085-Parker)

Copies mailed to:

Claimant

Employer

Unemployment Insurance - Baltimore

Richard Neuworth, Esq.