

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

— DECISION —

	Decision No.:	574-BR-87
	Date:	September 3, 1987
Claimant: Chala Sadiki	Appeal No.:	8704168
	S.S.No.:	
Employer: Progress Unlimited, Inc.	L.O. No.:	1
	Appellant:	EMPLOYER

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 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 ON October 3, 1987

— 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 Board of Appeals adopts all of the facts found by the Hearing Examiner with the exception of the last sentence.

The Board also finds as a fact that the claimant was intentionally avoiding the further contact from the employer with respect to returning to work, because she was wary of returning to work and was awaiting the advice of her counsel.

The Board concludes that the claimant voluntarily quit her employment by failing to return to work after an investigation had cleared her of previous charges of patient abuse. The claimant was informed by the employer that she would be returned to work, with back pay, and transferred to a new location to avoid recrimination. The employer made several attempts to contact the claimant over a period of over twenty days, including sending two certified letters to the claimant's address. The claimant failed to return any of the phone messages nor to pick up the certified mail because she was wary of returning to work and dealing directly with her employer.

The retention of an attorney does not insulate an employee from the normal requirements of the employer-employee relationship, nor suspend the ongoing reciprocal duties of each. The claimant was cleared of any charges against her and was asked to return to work. The employer had every right to communicate with the claimant directly about the simple matter of her work assignment, and the claimant's deliberate failure to respond over such a long period of time was clearly an abandonment of her position.

The claimant has also failed to show "good cause" or "valid circumstances" for leaving her work within the meaning of Section 6(a). Mere suspicion about the employer's motives does not suffice where there has been no showing of bad faith on the part of the employer. In the absence of good cause being shown, the maximum penalty must be applied under Section 6(a) of the law.

The penalty should begin with with the week beginning January 18, 1987, since the claimant abandoned her job during that week.

DECISION

The claimant left work voluntarily, without good cause. wit-bin the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning January 18, 1987 and until she becomes reemployed, earns ten times her weekly benefit amount (\$1,150) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech

Chairman

Gayle A. Varns

Associate Member

K:W

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Carol J. Lawson, Esq

UNEMPLOYMENT INSURANCE - BALTIMORE



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

(301) 383-5040

William Donald Schaefer
Governor

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK

Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

DECISION

Date Mailed: 6/12/87

Claimant: Chala Sadiki

Appeal No.: 8704168

S. S. No.:

Employer: Progress Unlimited, Inc.

L.O. No.: 1

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 OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 513, 1100 NORTH EUTAW STREET, BALTIMORE MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

6/29/87

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present
Carol J. Lawson, Esquire

Julie Desmarais,
Personnel Director

FINDINGS OF FACT

The claimant had been employed at Progress Unlimited from October 1985 to January 12, 1987. The claimant was employed as a Community Living Assistant, a direct care worker of mentally retarded and disabled adults in a community center. The claimant worked from 5:00 p.m. on Friday through Monday until 7:00 a.m. The claimant worked at the Owings Mills, Maryland location. The claimant had to care for three female clients ranging in ages from 24 years, to 54 years and 67 years.

The claimant had been suspended from Progress Unlimited Incorporated on January 16, 1987, due to an alleged patient abuse

charge pending an investigation on the charges made by the client. The employer stated on January 20, 1987 the claimant had been informed by the Chief Executive Officer at Progress Unlimited Incorporated that the investigation of the allegation of patient abuse revealed that there was no evidence of abuse. Therefore, the claimant was informed on January 20, 1987 that she would be contacted by the employer to inform her of her next assignment. The program director at the place of employment attempted to reach the claimant by telephone on January 20, 21, 23 and 28, 1987, but the claimant could not be reached. Also, the employer sent two certified letters to the claimant's address of record on January 26, 1987 and on February 10, 1987. However the claimant did not receive the correspondence. The claimant was going to be transferred from the position that she held due to the accusation of abuse, however, the employer was unable to inform the claimant of this decision and her new assignment. The claimant had no intentions of voluntarily resigning from her employment.

CONCLUSIONS OF LAW

Section 6(a) of the Maryland Unemployment Insurance Law provides that an individual is disqualified from receipt of benefits when her unemployment is due to leaving work voluntarily. This Section of the Law has been interpreted by the Maryland Court of Appeals in the case of Allen v. CORE Target City Youth Program, (275 Md 69). In that case the Court said: "As we see it, the phrase due to leaving voluntarily' has plain, definite and sensible meaning; it expresses a clear legislative intent that to disqualify a claimant from benefits the evidence must establish that the claimant, by her own choice intentionally, of her own free will, terminated the employment."

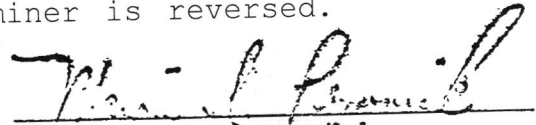
The claimant had been suspended from the place of employment on January 16, 1987 due to alleged patient abuse. The employer stated that the claimant was informed on January 20, 1987, that the investigation by the employer revealed no patient abuse on the part of the claimant. The program director at Progress Unlimited Incorporated was to contact the claimant after January 20, 1987 to inform the claimant of her next assignment. However, the claimant was never notified by the Program Director of the new assignment for the claimant to go to. It will be held that the claimant was never given any definite details of what new assignment to go to after she became suspended on January 16, 1987. The claimant did not have the intent to voluntarily resign her employment with Progress Unlimited, Incorporated. It will be held that the claimant was discharged, but not for misconduct connected with the work within the meaning of Section 6(c) of the

Insurance Law. The determination of the Claims Examiner will be reversed.

DECISION

The claimant was discharged, but not for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification shall be imposed based upon her separation from her employment with Progress Unlimited Incorporated. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.



Marvin I. Pazornick
Hearing Examiner

Date of hearing: 5/28/87
rc
(3040&3041&3042)-Graves
Copies mailed on 6/12/87 to:

Claimant
Employer
Unemployment Insurance - Baltimore - (Pre-MABS)

Carol J. Lawson
Attorney At Law