



# Maryland

## Department of Economic & Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
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*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

	Decision No.:	598-BR-91	
	Date	May 23, 1991	
Claimant:	Kenneth Penson	Appeal No.:	9103455
		S. S. No.:	
Employer:	Southern Galvanizing Co.	L. O. No.:	50
		Appellant:	CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.		

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— 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

June 22, 1991

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— 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 claimant worked in a non-union position in maintenance for this employer, beginning January 23, 1990. His last day of work was January 6, 1991.

The company had been experiencing a slow period and laying off a number of employees. On January 6, 1991, the employer informed the claimant that he was laid off. The length of time of the layoff was indeterminate, but it was anticipated that he would be back to work within three or four weeks. No definite date of return was given to the claimant. On January 9, 1991, the claimant picked up his pay check. He inquired about a definite date to return, but the employer could not give him one. The claimant informed the employer that he was leaving for Texas, a state from which he had originally come.

Later that afternoon, the employer decided to recall some of its employees, including the claimant, beginning on the midnight shift that night. The employer, however, knew that the claimant had already left for Texas by this time. The employer had a phone number for the claimant in Texas, but it assumed that this would not be a correct number anymore. In addition, the employer was aware that the claimant was on a bus and would not even arrive in Texas until after the midnight shift had begun. There was no further contact between the claimant and the employer.

The Board concludes that the claimant was laid off from his employment on January 6, 1991. He did not quit his employment. A person who is not currently employed cannot quit within the meaning of Section 6(a) of the law. Laster v. Manpower, Inc. (220-BR-90). The claimant was on an indefinite layoff at the time that he left for Texas. Since he was not employed, his leaving for Texas did not constitute a voluntary quit.

A claimant may be penalized under Section 6(d) of the law for failure to accept suitable work when his old job is offered back to him. In such a case, the burden shifts to the claimant to show that the work is not suitable. Bishton v. Baltimore County Dept. of Aging (879-BR-83). In this case, however, the claimant was never actually recalled to work. At the time of his last contact with the company, the company still had an indefinite layoff in effect. After the employer made the decision to end the layoff and recall the claimant, the employer never contacted the claimant with this offer. The claimant therefore cannot be considered to have refused work within the meaning of Section 6(d) of the law, since the work was never offered him.

#### DECISION

The claimant did not voluntarily quit his employment within the meaning of Section 6(a) of the law. He was laid off, but not for any misconduct within the meaning of Section 6(b) or