DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

— DECISION —

Decision No.: 70-BR-86

Date: January 24, 1986

Claimant: Irene M. Ruby

Appeal No.: 8510716

S. S. No.:

Employer: Hearn & Kirkwood

L.O. No.: 2

Appellant: EMPLOYER

Issue: Whether the claimant failed to accept available, suitable work within the meaning of Section 6(d) 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 February 23, 1986

—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 and concludes that the claimant failed, without good cause, to accept suitable work offered to her, within the meaning of Section 6(d).

In concluding that the claimant had good cause to refuse the offer to return to her former job, the Hearing Examiner relied on several Board precedent cases. Those cases generally hold that disqualifying a claimant under Section 6(d) for the exact same conduct that she was previously disqualified for, under Section 6(a), 6(b) or 6(c), is contrary to the legislative intent of a maximum penalty' {10 weeks under Section 6(c) and 10x weekly benefit amount under Sections 6(a) and (b)}. Flowers v. TSI Infosystems, Inc., 224-BR-83. See also, Buchan v. Salisbury Employment Office, 708-BR-83.

The Board agrees with the Hearing Examiner that the reasoning of these cases is equally applicable to a case, such as this one, where the issue of Section 6(a) {or Sections 6(b) and 6(c)} was previously adjudicated in the claimant's favor. However, the claimant did not refuse to return to Hearn & Kirkwood for the exact same reasons that she quit. One of the primary reasons she quit because she had another job lined up. Although she was also clearly dissatisfied with certain 'working conditions at the time she quit, that still existed when she refused the offer, the job offer at Ace Hardware was an important, if not the chief factor in her original decision to quit. Obviously, this was not a factor in her decision to refuse the offer to go back Hearn & Kirkwood since she was separated from Ace Hardware. Therefore, the Board cases cited by the Hearing Examiner, while providing precedential value in deciding this case, are factually distinguishable in an important way.

The Board does find that since some of the same conditions that caused the claimant's resignation (most particularly the cold temperature necessary to the work) still existed, and since the claimant had only been out of work for approximately one month, and in claims status only two weeks at the time she refused the job, a maximum penalty under Section 6(d) is not warranted.

DECISION

The claimant failed, without good cause, to accept 'available, suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits from the week beginning August 11, 1985 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended

Benefits and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.

Associate Member

Chairman

W:K
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Donna Gross - Room 413

UNEMPLOYMENT INSURANCE - GLEN BURNIE