



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

DECISION NO.: 453-BH-84

DATE: May 8, 1984

CLAIMANT: Angelo Coward

APPEAL NO.: FSC-705

S.S.NO.:

EMPLOYER: Randolph Phipps Construction
Company, Inc.

LO. NO.: 40

APPELLANT: EMPLOYER

ISSUE Whether the claimant failed, without good cause, to accept suitable work when offered to him within the meaning of §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 MAY BE 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

June 7, 1984

-APPEARANCE-

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Angelo Coward - Claimant

Randolph Phipps -
President

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment & Training's documents in the appeal file.

The claimant's testimony before the Board was not only directly contradicted by the employer, but by his own statements to the Claims Examiner, as evidenced by the agency Form 221 in the record. The Board also notes that the claimant's statement on the 221 form contradicts some of his testimony before the Appeals Referee. Therefore, the Board does not find the claimant's testimony to be credible. The Board does find the testimony of the employer's witnesses, particularly the supervisor who testified before the Appeals Referee and who had direct contact with the claimant, to be credible.

FINDINGS OF FACT

The claimant is a steamfitter and a member of the Sprinkler Fitters Union. The claimant had been laid off from his union work and obtained several assignments with the Phipps Construction Company, the employer in this case. One of his assignments was performing work at Marketplace in downtown Baltimore. Following this, he was assigned to work at several other locations, including Morgan State College. When the job was completed at Morgan State, the employer offered the claimant a job at Marketplace again. The claimant refused this offer because he was a member of a union and his union was picketing the Marketplace site to protest the City's hiring of non-union contractors.

The Board finds as a fact that the job offer to the claimant was due to a contract that the employer had to do a job at Marketplace and was in no way due to a vacancy created as a result of the union protest or any other labor dispute.

CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant refused to accept suitable work when offered to him, without good cause, within the meaning of §6(d) of the law.

The Appeals Referee concluded that the job offered was not suitable pursuant to §6(d)(2) because of the union protest at the job site. We do not agree. Section 6(d)(2) provides that:

"Notwithstanding any other provisions Of this Article, no Work shall be deemed suitable and benefits shall not be denied under this Article to any otherwise eligible individual for refusing to accept new work. . . if the position offered is vacant due directly to a strike, lockout, or other labor dispute."

[Emphasis added.]

The uncontroverted evidence is that the position offered was not vacant due to a labor dispute, but was available due to the ordinary course of business of the employer.

The claimant has offered no other explanation or justification for his refusal of the job. Therefore the maximum penalty is warranted.