Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

—DECISION—

Decision No.: 1074-BR-88

Date: Nov. 18, 1988

Claimant: Terri N. Dei Svaldi

Appeal No.: 8807294

S. S. No.:

Employer: Martin Taubenfeld, DDS PA

L.O. No.: 2

Appellant: CLAIMANT

Issue: Whether the claimant's unemployment was due to leaving work voluntarily without good cause within the meaning of Section 6(a) of the law or whether the claimant was discharged for misconduct, connected with the work, within the meaning of Section 6(c) 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, 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 AT MIDNIGHT ON December 18, 1988

—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 first question to be decided in a case such as this is whether the claimant quit the job or was discharged by the employer. In this case, there were two conflicting versions of the telephone conversation which led to the claimant's separation from employment. The Hearing Examiner was justified in accepting the claimant's version of this phone conversation, especially since the claimant's testimony about this conversation was made in person and under oath. The Board of Appeals, however, disagrees with the conclusions to be drawn from this phone conversation.

During a phone conversation in which the employer had relayed to the claimant the fact that other employees were complaining about her work production, the claimant became extremely upset because she felt that co-employees were making these complaints behind her back and because the employer believed them. The claimant used curse words. The employer stated: "If that's the way you feel, then don't come back." The claimant replied, "Fine."

The Board concludes that the claimant was discharged. The employer initiated the conversation about the claimant separating from employment. The employer also ordered her not to return if she felt the way that she obviously felt. If the claimant had not replied at all, and simply hung up the phone, there would have been no question but that she was discharged. Her use of the word "fine" in reply indicates simply that she was not willing to importune her employer to change his mind.

Although, as the Hearing Examiner indicates, the claimant could have possibly changed the employer's mind by replying in a different manner, this is not the standard which should be used in determining whether a separation is a quit or a discharge. The employer communicated his intention that the claimant not return to the job; a discharge occurred at that point. Whether the employer would have changed his mind if the claimant responded in another matter is a speculative point. Whether the claimant was content to be discharged is irrelevant.

Once it has been shown that a discharge occurred, the burden is on the employer to show that the discharge was for "misconduct" or "gross misconduct" as those terms are used in Section 6(b) or Section 6(c) of the Maryland Unemployment insurance Law. Bass v. Harbor Construction (87-BH-83). In this case, insufficient evidence has been shown that the claimant's handling of the office mail or office phone calls amounted to misconduct. The only question which remains is whether the claimant's words on the phone to her employer during the last phone conversation amounted to misconduct. The Board concludes

that the claimant's use of inappropriate language to the employer when confronted with these allegations was misconduct, and that she was discharged, at least in part, for this language. The Board concludes, however, that the minimum penalty is appropriate in these circumstances.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning May 29, 1988 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:H
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - GLEN BURNIE

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

- DECISION -

Date:
Mailed: 8/29/88

Claimant: Terri N. DeiSvaldi

Appeal No.: 8807294

S.S. No.:

Employer: Martin Taubenfeld, DDS PA

L.O. No.: 2

Appellant: 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 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 9/13/88

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK. 9/13/88

- APPEARANCES -

FOR THE CLAIMANT: Claimant-Present

FOR THE EMPLOYER: Not Represented

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Glen Burnie, effective June 5, 1988.

The claimant had been employed by Dr. Martin Taubenfeld for a period of one year as a Dental Assistant and then Receptionist at a pay rate of $7 per hour until June 3, 1988.

After the claimant became pregnant, she requested that her duties be changed to that of a receptionist, to which the employer complied.

There came a time when the employer went on vacation. The claimant continued to work. After the vacation, the employer called the claimant at home to discuss certain matters. He further indicated to her that other office employees were complaining that she was not doing her share of the work. This upset the claimant considerably and she expressed surprise and amazement that fellow employees wanted to "stab her in the back."

It further came to the attention of the employer, the claimant concedes, she had placed telephone lines on hold or busied the signals, for a moment or two while she took care of a personal matter.

At the end of the conversation with the employer, and her expression of a hurt that fellow employees would speak against her, the employer explains:" If that's the way you feel about it, don't come back." The claimant complied.

CONCLUSIONS OF LAW

Clearly, at the end of the conversation with the employer, the claimant had an option. Her option was not to come back or to return to work and get along with the others as well as possible. Since the claimant was pregnant at the time and would soon be leaving the job for reasons of maternity, it is concluded that she elected not to return to work for both reasons: expression of the employer that she not return to work if she felt bad about the situation and due to her pregnancy. The claimant expects to deliver her baby by mid-October 1988. Accordingly, I conclude that the cause for the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law, and she has failed to show any "valid circumstances" for voluntarily leaving or declining to return to permanent, gainful, employment.

The Statute defines a "valid circumstance" as one where there is a substantial cause directly attributable to the conditions of employment or actions of the employer, or where there is another cause of such a necessitous, or compelling nature that the individual has no reasonable alternative but to leave the job. Accordingly, the determination of the Claims Examiner shall be affirmed.

DECISION

It is held that the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of

Section (a) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning May 29, 1988 and until the claimant becomes employed, earns at least ten times her weekly benefit amount or $1,280, and thereafter becomes unemployed through no fault of her own.

Date of hearing: 8/17/88
rc
(6071)-Graves
Copies mailed on 8/29/88 to:

Claimant
Employer
Unemployment Insurance - Glen Burnie - MABS