

Maryland

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 No.: 119-BH-88
Date: Feb. 10, 1988

Claimant: Ruth Adams

Appeal No.: 8706567

S. S. No.:

Employer: Fairfax Mortgage Corp.

L.O. No.: 12

Appellant: EMPLOYER

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law; whether the claimant was discharged for misconduct, connected with her 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 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.

March 11, 1988

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT

Ruth Adams, Claimant;
James Otway, Attorney;
Rory Wallace, Witness

FOR THE EMPLOYER:

Judy Covington,
Senior V.P.;
Charles Messick,
Mtg. Consultant;
Steven Marquart

EVALUATION OF 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 Economic and Employment Development's documents in the appeal file.

The Board was particularly impressed with the credibility of Rory Wallace, an employee of Fairfax Mortgage who was subpoenaed by the claimant and who testified on the claimant's behalf.

FINDINGS OF FACT

The claimant was employed as a loan processor for Fairfax Mortgage Company until she was discharged on or about May 21, 1987. The claimant began working for the company in March, 1986. As a loan processor, she was paid a basic draw against commission. She worked in the Salisbury office.

The claimant did very well at her job. Sometime shortly before she was discharged, she had a conversation with the chairman of the Board, Malcolm Berman, who indicated he was so pleased with her performance that he would increase her basic draw from \$16,000 a year to \$20,000 a year and also discussed possibly promoting her and giving her a new title, although that portion of the discussion was never put in writing.

The claimant's immediate supervisor was a Mr. Steven Marquart, who worked out of the Baltimore office. Several incidents occurred, resulting in a conflict between the claimant and her immediate supervisor. One particular incident, which occurred shortly before she was discharged, involved a settlement that was postponed at the last minute by Mr. Marquart. Although the claimant did not feel that the settlement needed to be postponed, she reluctantly conveyed this message to the realtor involved. The realtor was very angry and asked who had authorized this postponement. The claimant, not believing she was doing anything wrong, gave the realtor Mr. Marquart's name. As a result, Mr. Marquart became very angry with the claimant and told her that when she came back from her planned vacation, he wanted to meet with her. There had been several other clashes between the claimant and Mr. Marquart, particularly over the question of whether certain fees should be assessed in settlements. These fees were standard for the employer, but such were not the practice in settlements on the Eastern Shore of Maryland. The claimant attempted to get the fees waived in order to be competitive with other mortgage companies on the Eastern Shore. After some disagreement with her supervisor, it was finally agreed that the Baltimore office would waive the fees in return for an increase in points to offset the difference in cost.

The claimant went on a pre-arranged and approved vacation on May 13, 1987. When she returned to work on the evening of the 21st of May, at approximately 5:00 p.m., she went to the bank. She found that the locks had been changed and she could no longer get in. In addition, when she looked in through the window, she saw that her desk had been completely cleared off of all belongings. Further, she also discovered, upon checking her bank account, that the direct deposit of her commissions that she had been expecting to be deposited that day had not been deposited by the bank. The claimant became very upset by these occurrences, and when she got home she called a fellow employee, Rory Wallace. Ms. Wallace informed the claimant that she had overheard one of the other managers and Mr. Messick, a management consultant for the employer, informing several customers that the claimant was to be fired and would no longer be working there. In addition, Mr. Marquart had told Ms. Wallace and another employee that when the claimant came to work the next day and came into the office, they were to leave the office so that Mr. Marquart could be alone with the claimant. Upon hearing all this, the claimant became convinced that she was fired. She was also afraid to come to work the next day and therefore did not do so on that Friday.

The claimant did call her supervisor, Mr. Marquart, the following Monday or Tuesday. In that discussion, she asked him for a written statement of why she was fired and also asked for her check. He indicated "okay" to her request, but when she came to the bank later to pick up the statement and the check, neither were ready, and she was told that he had changed his mind about giving her either one of those items.

That same week, the claimant called and spoke with the Chairman of the Board, Mr. Berman, who claimed he had no knowledge of what was going on with regard to her termination.

It is undisputed that Mr. Marquart had the authority to terminate the claimant, or at least have input into that decision. In any event, the claimant was never invited to return back to work, nor did she ever report back to work.

CONCLUSIONS OF LAW

After carefully considering all of the evidence, the Board concludes that the claimant was discharged by the employer. Although the employer protested that the claimant quit and that she had not been fired at that time, the Board is particularly influenced by the very credible testimony of the

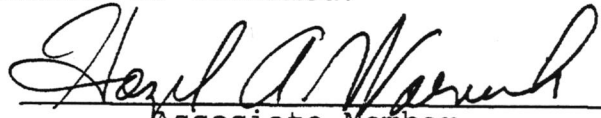
co-worker, who reluctantly testified to what she heard regarding the claimant's termination. Further, the employer's explanation as to why they had changed the locks and cleared off the claimant's desk are not particularly credible.


The Board concludes that when the claimant returned from her trip and went to the bank, she correctly deduced from what she saw that she indeed had been discharged or was about to be discharged as soon as she set foot into the bank. This was confirmed by what she was told by her co-worker and her reluctance to return to the office the next day is understandable. Furthermore, there is no evidence that the claimant committed any acts that would constitute misconduct. She was never given any evaluations to show that she was doing a poor job or warned about any serious problems with her performance. The clashes that she had with her manager reflect a difference in their judgment but certainly does not reflect any misconduct on the claimant's part. Therefore, the decision of the Hearing Examiner will be affirmed.

DECISION

The claimant was discharged, but not for misconduct, connected with her work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The decision of the Hearing Examiner is affirmed.


Associate Member


Chairman

W:K

kbm

Date of Hearing: January 5, 1988

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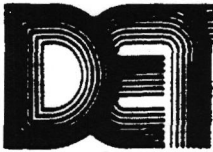
CLAIMANT

EMPLOYER

James L. Otway, P.A.
Anthenelli & Otway
108 E. Market Street
P.O. Box 4096
Salisbury MD 21801

Fairfax Savings & Loan Assoc.
ATTN: Personnel/Payroll Dept.
955 S. Salisbury Blvd.
Salisbury, MD 21801

UNEMPLOYMENT INSURANCE - SALISBURY



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
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

Mailed: 8/18/87

Date: 8706567

Appeal No.:

S. S. No.:

Ruth E. Adams

Claimant:

Fairfax Savings & Loan Assoc.

Employer:

12

L.O. No.:

Claimant

Appellant:

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 515, 1100, NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

9/2/87

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

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 Salisbury, effective May 24, 1987.

The claimant had been employed by Fairfax Savings Association in Salisbury for one year and three months until May 21, 1987, in the last position of Loan Processor or Mortgage Lender, on a commission basis and draw of \$16,000 annually. She was earning an average of \$4,500 per month.

The claimant's last day of work was May 12, 1987. She went on vacation to Florida on May 13, and returned late on May 21, 1987. When the claimant returned, she immediately went to the bank and

discovered that the locks on the doors had been changed. She was also able to glance through the window and saw that her desk top had been cleaned off. The claimant then attempted to withdraw money from her account where a deposit of \$3,000 should have been deposited on the previous day for commissions and/or draw earned. She could not withdraw any money from that account. She later learned that the money due to her had not been deposited. The claimant did not report on the following day, because she believed that she urgently needed legal help concerning the situation. The claimant also learned that while she was on vacation, others had been recruited for her job. A new person was in place in her job when she appeared on the next day at the employer's premises. The claimant requested a letter of dismissal and compensation due to her which was promised, but which was not forthcoming. A letter dated June 18, 1987, from the owner of Fairfax Savings Association, Malcolm C. Burman, confirms that the claimant was dismissed only because on previous occasions, she had threatened to quit.

I find as fact that the claimant was terminated while away on vacation, and that she was not permitted entry to the bank nor to her job when the locks on the doors were changed and access to her monies was prohibited.


CONCLUSIONS OF LAW

I conclude that the claimant was involuntarily unemployed by action of the employer in terminating her for vague reasons, or for reasons inconsistent with her work performance or duties. The claimant was locked out of her job, not permitted access to her money, and verbally told by the manager that she had been terminated. That action was confirmed by the owner of the organization by letter dated June 18, 1987. There is no evidence of any misconduct connected with her work. There is no evidence that the claimant voluntarily terminated her employment. Accordingly, the claimant's separation is non-disqualifying under the Maryland Unemployment Insurance Law.

DECISION

It is held that the claimant's unemployment was due to being dismissed, but for a non-disqualifying reason within the meaning of Section 6 of the Maryland Unemployment Insurance Law. Benefits are allowed for the week beginning May 24, 1987 and thereafter,

provided the claimant is otherwise eligible and is meeting the requirements of the Maryland Unemployment Insurance Law.



Robin L. Brodinsky
Hearing Examiner

Date of hearing: 7/23/87

rc

(4335)-Peterson

Copies mailed on 8/18/87 to:

Claimant

Employer

Unemployment Insurance - Salisbury - MABS

Fairfax Savings & Loan Association

Attn: Personnel/Payroll Dept.

955 S. Salisbury Blvd.

Salisbury, Maryland 21801