



Maryland

Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

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

— DECISION —

Decision No.:	2159-BR-92
Date:	Dec. 10, 1992
Claimant: Carolyn D. Woerner	Appeal No.: 9211543
	S. S. No.:
Employer: White Marsh Mall, Inc. ATTN: Management Office	L. O. No.: 40
	Appellant: CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.

— 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, 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

January 9, 1993

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

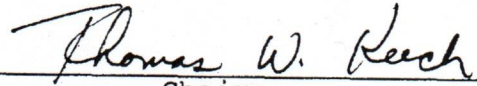
Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

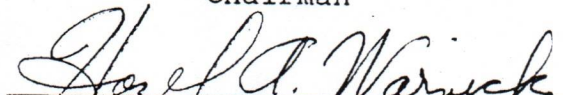
The Board adopts the findings of fact made by the Hearing Examiner. Based on these same facts, however, the Board reaches different conclusions of law. The employer's disciplinary action in (1) issuing a written warning to the claimant for the sole reason that she inquired as to why she had not been given additional hours; and (2) stating falsely in the warning that the claimant had been warned five times before for attitude problems, was action taken in bad faith, as found by the Hearing Examiner. Based on this finding, the Board concludes that the claimant had good cause for leaving work. Just as an employee has a basic duty of loyalty toward her employer, an employer has a basic duty to treat an employee in good faith. Where this duty is violated in regard to disciplinary procedures, good cause is established.

DECISION

The claimant voluntarily quit, but for good cause, within the meaning of Section 8-1001 of the Labor and Employment Article. No disqualification is imposed based upon the claimant's separation from employment with White Marsh Mall.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:H

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Mailed 6/26/92

Claimant: Carolyn D. Woerner

Date:

Appeal No.: 9211543

S. S. No.:

Employer: White Marsh Mall, Inc.
Attn: Management Office

L. O. No.: 40

Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

July 13, 1992

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

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present

NOT REPRESENTED

FINDINGS OF FACT

The claimant began working on July 3, 1986 and continued working until her separation on April 17, 1992. The claimant was employed to do Maintenance/Clean Up in the mall picnic area and was earning a salary of \$7.32 per hour at the time of her separation.

The record shows that since December, 1990, that she was included in the distribution of extra hours assigned to the part-time workers. She was working approximately 25 hours per week and wanted more hours. Whenever a full-time worker was off or additional hours were available, the claimant was given additional hours.

In the middle of March, 1992, the claimant learned that another employee was going to be out having eye surgery and her 11:00 to 3:00 shift would be available. The claimant requested that her supervisor allow her to work the shift. When she received her schedule a few days before her separation, she noted that she did not receive the shift assignment. She called her supervisor to find out why and was told by the supervisor "she did not feel it was necessary to give her the hours." The claimant expressed her dissatisfaction with the supervisor's decision and the conversation ended. It was thereafter, the claimant was called into the office and presented with a final warning. The claimant read the first line which said she had that she had been warned five times regarding her attitude and knowing that this was untrue, resigned her job. The claimant felt that she was being set up for discharge.

The only other time that the claimant had received any warnings verbally or otherwise regarding her attitude was in December, 1990 when she expressed her desire to work more hours. The claimant was a victim of retaliatory actions, because she requested additional hours. As further evidence of this, the claimant found that her personnel folder included a document reducing her hours even further had she continued to work there. She was scheduled to work 2 twelve and a half days during the next scheduled period.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1001 (c) provides that an individual shall be disqualified from benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer. The facts established in the instant case do not demonstrate such good cause under the Law. However, Title 8, Section 1001 (c) provides that a reduced disqualification may be imposed where the separation is precipitated by (1) a substantial cause connected with the conditions of employment or (2) another cause of such a necessitous or compelling nature that the claimant had no reasonable alternative but to leave the employment. The facts in this case demonstrate such valid circumstances, and therefore, a reduced disqualification is appropriate.

The claimant agreed to work part-time hours and the fact that she was not given additional hours does not in and of itself, justify the claimant's voluntary resignation. However, because the employer issued "a final warning" alleging bad attitude, shows bad faith in the use of the disciplinary process on the part of the employer. There is nothing to contradict the claimant's statement that she did nothing more than request additional hours and question his supervisor when he did not receive them.

This does not show an attitude problem warranting discipline. While the employer's actions showed bad faith, it did not create an environment that was so compelling and necessitous making it impossible for the claimant to continue working. While good cause for quitting was not shown, but valid circumstances did exist warranting a mitigated penalty. The determination of the Claims Examiner will be reversed.

DECISION

It is held that the claimant voluntarily quit her employment without good cause, but with valid circumstances, as provided by Maryland Unemployment Insurance Law, Title 8, Section 1001. Benefits are denied for the week beginning April 12, 1992 and for the four weeks that follow.

The determination of the Claims Examiner is reversed.

Mary Welcome
Mary Welcome *pmc*
HEARING EXAMINER

DATE OF HEARING: June 19, 1992
SPECIALIST ID: 40302
pmc/CASSETTE IN FILE

COPIES MAILED ON June 26, 1992 TO:

Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)