

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. Randail Evans, Secretary

Decision No.: 230 - BR - 88
Date: April 6, 1988
Claimant: Barbara Stewart
Appeal No.: 8708006
S. S. No.:
Employer: Access Enterprises
L.O. No.: 43
Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with her work, within the meaning of Section 6(b) or 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 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 May 6, 1988

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The Board agrees with the conclusion of the Hearing Examiner that the claimant did not resign, as she did not communicate to the employer her intention of resigning at any time prior to the time that she was terminated.

The claimant's resignation letter submitted immediately thereafter is considered a resignation in lieu of termination, and the Board has long held that such a termination of employment is a discharge within the meaning of the Unemployment Insurance Law. Miller v. William T. Burnett and Co. (442-BR-82), Tressler v. Anchor Motor Freight (105-BR-83).

The Board has not considered as evidence those documents submitted with the employer's letter of appeal, as only evidence submitted at the hearing may be considered. Section 6(e) of Article 95A. Even if the evidence was considered and credited, however, it would not change the decision in this case. The communication to co-workers of an intention to resign is an entirely different matter from the communication of that intention to the employer.

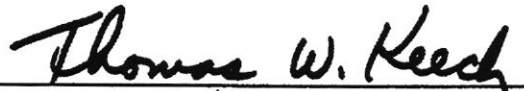
This is not to say that a resignation cannot be made verbally, see, Ludwig v. Docktor Pet Center (120-BR-85), or that somewhat ambiguous words indicating intent to resign, coupled with actions indicating such an intent, cannot be considered a resignation. Nelson v. Annapolis Housing Authority (965-BR-85). The communication cannot constitute such a resignation, however, unless it is communicated to the employer. Since the intention to resign was not communicated to the employer in this case, the Hearing Examiner correctly ruled that the claimant was discharged.

Since the claimant was discharged, the burden is on the employer to show that the discharge was for misconduct or gross misconduct under Sections 6(b) or 6(c) of the Maryland Unemployment Insurance Law. The employer clearly has not met the burden of proving misconduct in this case.

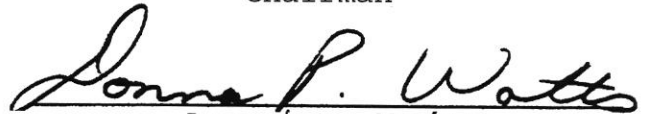
DECISION

The claimant was discharged, but not for gross misconduct or misconduct, connected with her work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from employment with Access Enterprises.

The decision of the Hearing Examiner is affirmed.



Chairman



Associate Member

K:DW

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

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

STATE OF MARYLAND
William Donald Schaefer
Governor

--- DECISION ---

Claimant: Barbara K. Stewart
Date: Mailed January 11, 1988
Appeal No: 8708006
S.S. No.:
Employer: Access Enterprises
L.O. No.: 43
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.

--- 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

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON January 26, 1988
NOTICE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE THE U.S. POSTAL SERVICE POSTMARK.

--- APPEARANCES ---

FOR THE CLAIMANT:

Present
Stephen Klitsch
Susan Klitsch

FOR THE EMPLOYER:

Glenn Y. Younes,
President

FINDINGS OF FACT

The Claimant was employed by Access Enterprises from, January 1, 1986 until May 6, 1987. She was a recruiter. The Claimant was on a \$24,000.00 drawing account annually.

On April 30, the Claimant was told by the president that her draw would be reduced to \$18,000.00 because she was in a slump in producing sales. She was told that she had to have a %100 commitment or she doesn't stay.

The employer learned that the Claimant had typed up a letter of resignation dated May 5, 1987 on the company typewriter and stationary however, she did not present this to the employer because as she had not made a decision to resign. The Claimant was discharged by the employer on May 6, 1987 and presented the letter of resignation after she was discharged by the assistant president.

The Claimant was in arrears of \$800.00 on her draw account for 1987.

The Claimant did the best she could however, as she had doubts about whether she could continue in this type of employment when her sales were down.

CONCLUSION OF LAW

In the case of Lee v. Memorial Hospital, 1327-BH-82, the Board of Appeals held that the Claimant's housekeeper's discharge for poor work performance is not as qualifying under Section 6(b), her only failing was that she through no fault of her own failed to meet the expectations of the employer.

It is concluded that the Claimant put forth a good effort, however, although she did the best she could she could not satisfy the employer because of her volume sales did not meet her draw, under such circumstances it is concluded she was discharged but for no misconduct connected with the work.

The fact that the Claimant typed up a letter of resignation but did not present it would not change these facts as she did not communicate her intent to resign. It is found that under these circumstances she did not resign but was discharged. The determination of the Claims Examiner will be reversed.

DECISION

The Claimant was discharged but not for gross misconduct or misconduct connected with the work within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from her employment with Access Enterprises. The Claimant may contact her local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.



John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: December 17, 1987
Cassette: 7704
Specialist ID: 43722
Copies Mailed on January 11, 1988 to:
Claimant
Employer
Unemployment Insurance - Wheaton (MABS)