



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
Associate Member

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 236-BH-87

Date: April 1, 1987

Claimant: Melvin F. Benneman

Appeal No.: 8609158

S. S. No.:

Employer: Murry's Steaks, Inc.

L.O. No.: 7

Appellant: EMPLOYER

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 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 ON May 1, 1987

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Barry Schlossberg -
Dir. of Personnel
Larry Bennett -
Director of Loss
Preventions
Solomon Jenkins -
Admin. Officer

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 and Training's documents in appeal file.

FINDINGS OF FACT

The claimant was employed from March 5, 1984 until July 24, 1986 for this employer. He was a security officer, employed full time, paid \$5.00 an hour.

In May of 1985, the claimant admitted that he had a substance abuse problem and asked the employer for help. The employer took the claimant to a hospital where he received treatment which required him to be out from work until June 22. The claimant returned to work on June 22 or 23 and was at the same time in an outpatient rehabilitation program. The claimant submitted informal reports to his supervisor about his progress.

The claimant's work was satisfactory until the summer of 1986 when the claimant began to exhibit wide mood swings at the work site. The claimant's supervisor, who had training and experience in the detection of substance abuse, also noted two other suspicious circumstances: the claimant's excessive use of sweets and excessive borrowing of money from co-employees. On July 24, 1986, the claimant was given a written warning on another matter. The claimant flew into a tirade, used foul language to the employer, ripped up the warning and walked out. He was then told to report to his supervisor.

The claimant's supervisor decided that the claimant needed another drug screening, based on his observations of the claimant's suspicious conduct. The claimant agreed to take this drug screening and left ostensibly for this purpose. The claimant was never heard from again.

The written warning which the claimant was being given on July 24, was for a uniform violation which had no connection in any way with the claimant's religious beliefs.

The company policy prohibited the use, carrying, possession or sale of controlled dangerous substances.

CONCLUSIONS OF LAW

The claimant was not discharged. His employer did require him to take a drug screening, but the claimant agreed to take the screening and simply never showed up afterwards.

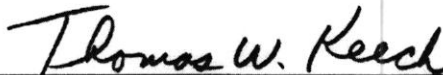
The employer's request that the claimant undergo a drug screening was eminently reasonable under all the circumstances. The claimant's voluntarily leaving rather than take this test, therefore, constitutes a voluntary quit, without good cause or valid circumstances as those terms are used in Section 6(a) of the law.

A claimant who has voluntarily quit his job has the burden of showing good cause or valid circumstances. Hargrove v. City of Baltimore (2033-BH-83). The claimant in this case has not carried his burden.


DECISION

The claimant left work voluntarily, without good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from benefits from the week beginning July 20, 1986 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1,480.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Chairman


Associate Member

K:W

kmb

DATE OF HEARING: February 10, 1987

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

(301) 383-5040

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MARK R. WOLF
Chief Hearing Examiner

CORRECTED DECISION
- DECISION -

Claimant: Melvin F. Benneman
Date: Mailed 10/14/86
Appeal No.: 8609158
S. S. No.:

Employer: Murry's Steaks, Incorporated
L.O. No.: 07
Appellant: Claimant

Issue: 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 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON 10/29/86

- APPEARANCES -

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by Barry Schlossberg, Director of Personnel; Solomon Jenkins Administrative Co-ordinator; and Larry Bennett, Director of Loss Prevention

EVIDENCE PRESENTED

The employer presents a copy of its attendance policy. The claimant was a Senior Security Officer. The employer was aware, during the course of the claimant's employment, that he had become drug dependent. However, the claimant had voluntarily come

to the employer asking help. The claimant was attending a drug rehabilitation program. During July, 1986, certain supervisory personnel noticed that the claimant was displaying unusual behavior. He seemed to be emotionally distraught. There were drastic mood swings. Further, the claimant had allowed his hair to grow longer, and he declined to cut it upon request. The claimant believed that since he was not meeting the public, there was no need for him to cut his hair short. Finally, there came a time, on or about July 24, 1986, that the claimant was warned that if he did not cut his hair, he could not come to work. Also, a meeting was held, in which the claimant's bizzare conduct was discussed, and the employer requested that the claimant submit to a urinalysis for drugs during the period of suspension for that purpose and for the purpose of cutting his hair.

The claimant explains that his grandmother, who raised him, passed away in New York. He had taken time off to attend her funeral and was very upset about it. Also, in the same week that she died, his brother was in a serious accident. All this caused considerable emotional stress and distress which reflected itself in his behavior and attitude. The claimant denies any involvement with drugs at this time. He became angry that the employer was accusing him of continuing to use drugs and using an excuse of a hair cut by means of getting rid of him.

After demands, the claimant voluntarily left the job and did not return.

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at College Park, effective July 27, 1986.

The claimant was employed by Murry's Steak, Incorporated as a Senior Security Officer for approximately two and one-half years until July 24, 1986. The claimant voluntarily left the job and did not return after the employer demanded that he get a hair cut and submit to a urinalysis for drugs, based solely upon his unexplained unusual behavior and mood swings.

The claimant was suspended pending these conditions. He, thereupon, voluntarily quit.

I find as fact that the claimant was suspended for the suspected use of drugs, without basis or foundation. I find as fact that the demand to get a hair cut was merely a pretext for suspending the claimant on the suspicion of using drugs.

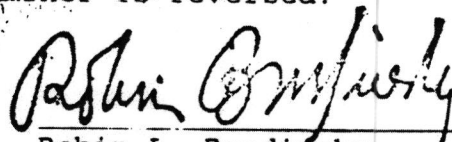
CONCLUSIONS OF LAW

I conclude that the claimant voluntarily left his job, with good cause, within the meaning of Section 6 (a) of the Maryland Unemployment Insurance Law. Without substantial basis or proof thereof, the employer suspended the claimant, because it believed that he was using drugs again, based solely upon observed swings and mood and other emotional distress. But, such emotional distress was attributable to the death of his grandmother and serious injury to his brother within the same week. Further, while the employer has presented copy of its rules and regulations with respect to attendance and absences, it has not presented any rule or regulation that a certain length of hair is necessary or mandatory on the part of a security officer who was not in contact with the public. Based thereon, I conclude the employer's demands were unreasonable and his suspension was unwarranted. Therefore, his voluntary separation was with good cause attributable to the conditions of employment, or actions of the employer, and is non-disqualifying under the Maryland Unemployment Insurance Law.

DECISION

The claimant left work voluntarily, but with good cause, within the meaning of Section 6 (a) of the Law. Benefits are allowed for the week beginning July 27, 1986 and thereafter, provided the claimant is otherwise eligible under the Law, and is meeting all other requirements of the Law.

The determination of the Claims Examiner is reversed.



Robin L. Brodinsky
HEARING EXAMINER

DATE OF HEARING - 9/29/86

cd
6291/Kolodkin

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Claimant
Employer
Unemployment Insurance - College Park