



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
J. Randall Evans, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032*

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

— DECISION —

	Decision No.:	426-BR-91
	Date:	April 17, 199
Claimant:	Appeal No.:	9016521
	S. S. No.:	
Employer:	L. O. No.:	45
	Appellant:	CLAIMANT

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 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 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 May 17, 1991

— 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 claimant worked for A T & T for 23 years as an operator. The company was attempting to downsize the work force. Everyone in the company received three years added to their service time and three years added to their age to determine if they were pension eligible. If a person was found to be pension eligible, an additional two years were added to both service and age under a Special Pension Offer, which was a retirement package. Everyone in Operator Services received the Special Pension Offer.

The claimant, as a member of Operator Services, received the Special Pension Offer. She received a further cash incentive to retire, consisting of a lump sum payment equal to six months' pay. The claimant, fearing an additional lay-off and subsequent withdrawal of the incentive package, decided to accept the package and take early retirement. The employer did not dispute the possibility of lay-offs or withdrawal of the package. The claimant's fears of imminent lay-off and withdrawal of the incentive package were justified.

Under Garrett v. A T & T Communications, 416-BR-91, the Board of Appeals found that the acceptance of this enhancement package, under very similar circumstances, did not show the intent to quit necessary under Section 6(a) of the law. Although, in Garrett, the evidence was clearer that the claimant's department had been identified as one with "surplus" employees, the facts in this case are not so different as to distinguish it from Garrett. Therefore, the claimant was laid off and her case will be considered as a discharge. See also, Conroy v. Alco Gravure, Inc., (436-BH-86), where the Board ruled that, where a decision has been made to lay off a certain number of people, the fact that the employees themselves choose who is to be laid off is of no consequence and does not change the separation into a voluntary quit.

There is no evidence of any misconduct on the claimant's part which caused her to be discharged.


DECISION


The claimant did not voluntarily quit within the meaning of Section 6(a) of the law.

The claimant was laid off, but not for any misconduct within the meaning of Section 6(b) or (c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from employment with A T & T Communications, Inc.

The decision of the Hearing Examiner is reversed with respect to Section 6(a) of the law.

Whether or not the claimant's monthly severance pay or lump sum severance pay is deductible from benefits is an issue not before the Board at this time. If the local office of this agency has issued a determination on this issue, it is the responsibility of the dissatisfied party to appeal that issue, if such a course of action is desired.


Associate Member


Chairman

HW:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

M. S. Cerstvik
M S C Associates

UNEMPLOYMENT INSURANCE - NORTHWEST

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Mailed: 1/21/91

Claimant: Helen M. Lewis

Date:

Appeal No.: 9016521

S. S. No.:

Employer: AT & T Communications, Inc. L.O. No.: 001
c/o Gates, McDonald & Company
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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, 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

February 5, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present
Denise Wiley, Witness

FOR THE EMPLOYER:

Nancy Bise,
Resource Manager

M.S. Cerstvik,
MSC Associates for
Gates, McDonald

FINDINGS OF FACT

The claimant was employed as an operator for twenty-three years.

Her final rate of pay was \$485.50 a week. The employer offered its qualified employees an attractive early retirement program which included a lump sum payment of six weeks salary and up to five years added to their service years. The employer offered this package because it was down-sizing but the claimant was not specifically threatened with the layoff or loss of work.

CONCLUSIONS OF LAW

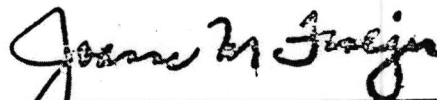
Article 95A, Section 6(a) provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record supports a conclusion that the claimant voluntarily separated from employment, without good cause or valid circumstances, within the meaning of Section 6(a) of the Law.

The claimant quit for personal reasons because she felt that not working for this employer was more attractive than working. The claimant had no definite job prospects awaiting her. The principle behind unemployment insurance benefits is to ease the economic strain of those who are unemployed through no fault of their own. Since the claimant's retirement was not required by company policy, health problems, or personal reasons of a compelling nature, it is determined that the claimant voluntarily quit, without good cause or valid circumstances, within the meaning of Section 6(a).

DECISION

The unemployment of the claimant was due to leaving work voluntarily without good cause, within meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning October 28, 1990 and until she becomes re-employed, earns at least ten times her weekly benefit amount (\$2,150) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is affirmed.



Joanne M. Finegan
Hearing Examiner

Date of Hearing: 12/28/90
ps/Specialist ID:45538
Cassette No: 10311
Copies mailed on 1/21/91 to:

Claimant
Employer
Unemployment Insurance - Northwest (MABS)

M.S. Cerstvik
M S C Associates