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

— DECISION —

Decision No.: 891-BR-90

Date: Sept. 10, 1990

Claimant: Renate Pawlik

Appeal No.: 9006136

S. S. No.:

Employer : Kenneth L. Brown, CPA

L O. No. : 43

Appellant: CLAIMANT

Issue: Whether the claimant left 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, 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 October 10, 1990

— 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 first question in this case is whether the claimant quit her employment or was discharged. Although the separation from employment in this case has many of the aspects of a discharge, the Board concludes that the Hearing Examiner was correct in finding that it was a voluntary quit within the meaning of Section 6(a) of the law. Therefore, the claimant has the burden of showing that her voluntary quit was with "good cause" or for a "valid circumstance" within the meaning of that section of the law.

The claimant quit because of changes in the conditions of employment imposed on her during the course of her employment. In any such case, the question is whether these changes were reasonable, in light of all the circumstances. The most important circumstance is the original agreement made at the time of hiring. Various working circumstances may be more or less objectionable, depending on what the original hiring agreement was.

The Hearing Examiner found that the claimant's work hours were from 8:30 a.m. to 5:30 p.m. Monday through Friday, with overtime "as needed, particularly during the tax season." The Board disagrees with this finding of fact. The claimant testified, and the employer agreed at least at times during his testimony, that the claimant was hired as a permanent employee to work from 8:30 a.m. to 5:30 p.m. with as much additional overtime as she desired. The Board finds as a fact that this was the original employment agreement.

Sixteen days after the claimant was employed, she was given an employer's handbook. In this handbook, the statement was made that the employer could require whatever overtime hours he desired, and that these hours were mandatory. Sometime after this, the employer directed the claimant to work until 8:30 p.m. two nights a week and on Saturdays. Because of the claimant's personal life, she arranged to have this changed. It was agreed that she would work until 7:00 p.m. on four nights a week and would work from 9:00 a.m. to 3:00 p.m. on Saturdays. The claimant generally worked this schedule.

On one particular Saturday, however, the claimant did not work the overtime. On the preceding Friday night, she had gotten word that her car insurance had been cancelled. It was required that she get this straightened out the following day, or she would not be able to legally drive. The claimant left a message on the employer's phone that Friday night that she could not work that Saturday. She was in contact with her employer, and she agreed to and did in fact work that Sunday for an equivalent number of hours.

The above incident caused the employer to make drastic changes in the claimant's work schedule. The claimant was changed from a permanent employee to a part-time, tax season employee whose employment would end on April 27, 1990. Her health insurance and other benefits were taken away. The claimant signed a paper agreeing to these changes, but her only choice was to sign the paper or to leave work immediately.

The claimant worked for a number of weeks under these conditions. Besides these major changes, there were other small detrimental changes in her working conditions. She no longer had a key, and she sometimes had to wait outside the office until the employer showed for work. She was only given one item of work to work on at a time, thus causing some inefficiency. Her employer was curt and unfriendly to her.

Because of all these reasons, the claimant voluntarily quit her employment on March 30, 1990.

The Board notes that the employer espoused the position that the claimant failed to work the hours required of her and was constantly trying to change the hours. The employer did not prove this, and the Board does not so find as a fact.

CONCLUSIONS OF LAW

A substantial detrimental change in the original conditions of employment, such as a reduction in pay or a severe reduction in hours, normally constitutes good cause for voluntarily quitting within the meaning of Section 6(a) of the law. There have been cases such as, Sandier v. Drs. Layton & Solomon (84-BH-89), where the Board has found that an employer's reduction of hours of an employee was justified, because the employee was missing so much time that it was reasonable for the employer to reduce the hours to approximately the number of hours that the claimant was actually working.

This is not such a case. The only substantial reason that the employer had for reducing the claimant's hours was her conduct over one weekend. During that weekend, because of a personal emergency, she worked the extra hours on Sunday instead of Saturday. This is a far cry from the situation in the Sandier case, where the employee had over a long period of time failed to work more than part-time hours anyway.

The employer's other reasons for cutting back the claimant's hours were not reasonable. There was no proof that she was substantially modifying her hours for her personal reasons. More importantly, the hours which the claimant was accused of

modifying were the revised hours, not the original hours agreed to at the time of employment. When an employer makes a pre-employment agreement with an employee as to what the hours of work are, that agreement constitutes part of the contract of employment. If an employer had different or a greater number of hours in mind when the employment agreement was made, this has no effect on the contract of employment unless that understanding is communicated to the employee at the time of hiring. Sending an employer's policy manual changing the hours of the employment two weeks after the agreement is entered into is ineffective. The original contract called for hours from 8:30 to 5:30; and it was the employer, and not the claimant, who modified the hours.

Since the claimant was not violating the original agreement, and since her attempts to comply with the employer's altered work schedule were generally successful, and since her only substantial violation of even the altered hours was due to a personal emergency, the Board concludes that the employer's later change of the claimant to a part-time status was unreasonable. Likewise, the elimination of the claimant's health insurance and benefits package was a violation of the original contract of employment and was also unreasonable. Most seriously, her change in status from a permanent employee to a tax season employee was a serious and detrimental alteration of the original contract of hire. When these detrimental changes in the original contract of hire are considered, together with the other more trivial changes (the lack of a key, the poor work management, and the lack of civility in the work place), the claimant is found to have had "good cause" for having left the employment within the meaning of Section 6(a) of the law.

DECISION

The claimant voluntarily left her employment, but with good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the reason for separation from Kenneth L. Brown. The claimant may contact her local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:HW
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

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 —

Date: Mailed: 7/12/90

Claimant: Renate A. Pawlik

Appeal No.: 9006136

S. S. No.:

Employer: Kenneth L. Brown

LO. No.: 043

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. Whether there is good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06.02(N).

— 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 HE 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 July 27, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Kenneth L. Brown, CPA
Barbara Brown, Office Manager

FINDINGS OF FACT

The claimant worked as a accountant for this CPA firm from December 11, 1989 to March 30, 1990. When hired the claimant understood the claimant would work 8:30 a.m. to 5:30 p.m. Monday through Friday with overtime as needed, particularly during the tax season. As the work escalated during the tax season, the employer wanted the claimant to work late on Tuesday and Thursday evenings. But , because the claimant plays tennis on Tuesday

evenings, the employer agreed that the claimant would work until 7:00 p.m. the other days of the week instead. The claimant wanted a flexible schedule but the employer, a sole practitioner, wanted the claimant to keep regular hours in order to be able to plan the work load. But the claimant, who commuted from Fairfax, VA, would want to beat the traffic home and basically did not want to let her working hours interfere with her other activities. She had previously worked in a larger office that could accommodate a more flexible schedule. After trying to accommodate the claimant's scheduling desires, the employer decided that it would be best to reduce his expectations of her, cutting her hours and agreeing to keep her on through the tax season. As a result the claimant signed an agreement on February 27, consenting to six and a half hours per day at her same hourly rate but without the employee benefits of a full-time employee and to work through April 27, 1990. After so agreeing, the claimant resigned on March 30, 1990.

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 is a professional and accepted this position knowing that she would not have a straight time 9 to 5 job especially during the tax season. She primarily quit because she could not set her own hours and it is concluded that the employer did not make unreasonable demands or create a hostel and unacceptable working environment. The employer made every effort to accommodate the claimant, but she did not reciprocate.

This hearing was originally scheduled for May 18, 1990 and the appeal was dismissed at that time because the claimant did not appear. She explained at the new hearing, that she had not received a copy of the hearing notice.

DECISON

Good cause is found to reopen this dismissed case.

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning March 25, 1990 and until she becomes re-employed and earns at least ten times her weekly benefit amount ($2,050) 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: June 27, 1990
lr/Specialist II): 43718
Cassette No: 4252, 4253
Copies mailed on July 12, 1990 to:

Claimant
Employer
Unemployment Insurance - Wheaton (MABS)