

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS
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Chairman
HAZEL A. WARNICK
MAURICE E. DILL
Associate Members
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Claimant: Gilbert A. Surquy

Decision No.: 10-BH-86
Date: January 7, 1986
Appeal No.: 12378
S. S. No.:

Employer: Forest Service

L.O. No.: 40
Appellant: CLAIMANT

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of §6(a) of the law and whether the claimant was able, available and actively seeking work, within the meaning of §4(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 MAYBE 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 February 6, 1986

— APPEARANCES —

FOR THE CLAIMANT:

Gilbert A. Surquy - Claimant

FOR THE EMPLOYER:

C. Wm. Bernstein -
Personnel Officer

DEPARTMENT OF EMPLOYMENT & TRAINING
John Roberts - Legal Counsel

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Employment & Training's documents in the appeal file.

The hearing before the Board consisted of legal argument only.

The claimant was not disqualified for voluntarily quitting his job by the Hearing Examiner. The claimant did not appeal this issue. At the legal argument before the Board, the employer stated that it did not want to contest that issue either. The agency did not contest the issue under §6(a) of the law either and the Board is going to affirm the decision of the Hearing Examiner with respect to §6(a) of the law. The following decision deals only with §4(c) of the law.

FINDINGS OF FACT

The claimant left his last employment approximately the middle of April of 1983 because he was injured and was no longer able to perform that employment. He was granted sick leave and a number of leaves of absence, but he was not allowed to return to employment on account of his inability to physically perform the services of the job.

The claimant made an application for benefits effective September 9, 1984. Most of his previous work history was as an auto service specialist, and this was a job that he could not perform any more. The claimant was classified by the unemployment insurance division as a general clerk. The claimant is presently looking for jobs such as cashiering and clerk jobs which he is able to perform under his present physical limitations.

CONCLUSIONS OF LAW

The Board agrees with the agency argument in this case that the claimant is able to work within the meaning of §4(c) of the law.

In the case of Randall v. Employment Security Administration, 5 CCH UIR (Md.), Par. 8400, Superior Court of Baltimore City, 12/13/76, the Court determined that, in the case of a claimant who was precluded by physical impairment from his previous work in heavy construction, but who may have been able to perform other types of work, that a consideration of the following facts must be made before a claimant can be disqualified under §4(c) of the law:

1. the type of work formerly done by the claimant;
2. the type of work the claimant was capable of performing at the times the claims in issue were filed;
3. the type of work the claimant sought in light of the medical restrictions placed upon him; and,
4. the existence of or market for the type of work the claimant was seeking.

In this case, although the claimant was unable to perform his former job, he was determined by the unemployment insurance administration to be capable of performing jobs in the category of clerk or cashier. He was seeking that type of employment. The agency argues that the claimant's reclassification suffices to show that there was an adequate number of jobs in this category to establish that there are numerous light clerk and cashiering type of jobs available in the economy.

Considering that the claimant, although precluded from his former work, is registered for, classified as capable of performing, and is actually seeking a type of work which exists in great numbers in the economy, the claimant will be found to be able to work within the meaning of §4(c) of the law.

DECISION

The claimant was able to work within the meaning of §4(c) of the law. No disqualification is imposed upon the claimant based upon an inability to work.

The decision of the Hearing Examiner with respect to §4(c) of the law is reversed.

The claimant left work voluntarily, but with good cause, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. No disqualification will be imposed based on his separation from his employment with the Forest Service.

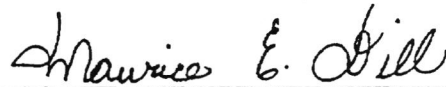
The decision of the Hearing Examiner with respect to §6(a) of the law is affirmed.


Chairman


Associate Member

K:W

I concur in the result.


Associate Member

D
kmb

DATE OF HEARING: August 14, 1985

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Legal Aid Bureau, Inc.

John Roberts - Legal Counsel

UNEMPLOYMENT INSURANCE - EASTPOINT



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Chief Hearing Examiner

— DECISION —

Date: Mailed: Feb. 11, 1985

Claimant: Gilbert A. Surguy

Appeal No.: 12378

S.S. No.:

Employer: Forest Semite

L.O. No.: 40

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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON February 26, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Gilbert A. Surguy - Claimant
Vanita Taylor - Legal Aid
Bureau, Inc.

FOR THE EMPLOYER:

William Bernstein -
Personnel Officer -
Department of Natural
Resources

FINDINGS OF FACT

The claimant has a benefit year effective September 9, 1984. His weekly benefit amount is \$175.00. The claimant was employed by the Forest Service of Baltimore, Maryland on January 30, 1974. He was performing duties as an Auto Service Specialist at \$5.97 per hour at the time of his leave of absence on April 20, 1983.

The testimony reveals that on April 20, 1983, the claimant was put on sick leave and was hospitalized as of April 21, 1983 for a period of ten days. He was finally released by his doctor on July 29, 1983 with restrictions against lifting, stooping and bending which was necessary in his job as an automobile mechanic on large trucks.

He reported to his employer and there was no work available for him, since he was no longer able to do the job that he had been doing. On December 21, 1983, the claimant was put on leave without pay, which expired on June 20, 1984. He was then placed on another leave of absence without pay for personal reasons for a year and a half, which extends until January of 1986.

The claimant applied to Social Security for disability in August of 1984, indicating that he could not do the job that he had been doing. However, he was turned down, since he was capable of doing other work.

The employer knew about the claimant's condition, since the doctor has sent all the reports to them.

In April of 1984, the claimant was given a twenty-five percent impairment of his right knee, which was permanent, and was totally precluded from kneeling, squatting or climbing on the machinery, which was required in his job. The employer, however, had indicated to the claimant that he would be denied from returning to work unless he had a doctor's certificate stating that he was completely well.

After informing his employer that he would not be returning to his current position, the employer then offered him the option of disability retirement, leave of absence for personal reasons, which he took, and resignation which he rejected. The claimant presently is on a personal leave of absence for a year and a half.

The claimant indicates that he is looking for work, but that he has done very little beside automotive mechanic work in his lifetime. His classification has been changed with the Unemployment Division from a mechanic to a general clerk, and the claimant is presently looking for things such as a cashier in a gas station, etc.

CONCLUSIONS OF LAW

It is concluded that when a claimant returns to work and no work is available for the claimant upon the expiration of an approved leave of absence, the claimant's separation is for a non-disqualifying reason, and no penalty is warranted under Section 6(a) of the Law. The determination of the Claims Examiner, therefore, will be reversed.

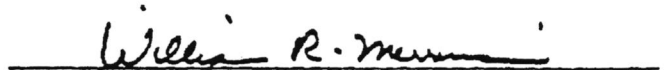
It is further concluded that the claimant is not able, available nor actively- seeking work, and a disqualification under Section 4(c) of the Law will be imposed. The claimant's disability preceded the date of his filing for unemployment. Therefore, there is no sick claim involved.

DECISION

The claimant left work voluntarily, but with good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification will be imposed based on his separation from his employment with the Forest Service.

The determination of the Claims Examiner under Section 6(a) of the Law is reversed.

The claimant is not able, available nor actively seeking full-time work within the meaning of Section 4(c) of the Law., He is disqualified from receiving benefits for the week beginning April 15, 1984 and until he meets the requirements of the Law.



William R. Merriman
Appeals Referee

Date of hearing: 2/4/85

amp/1786

(D. Self)

0230

Copies mailed on February 11, 1985 to:

Claimant
Employer
Unemployment insurance - Eastpoint

Vanita Taylor