



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 —

Decision No.: 1025-SE-85

Date: November 19, 1985

Claimant: Robert J. Dalton

Appeal No.: 13021

S. S. No.:

Employer: Francis O. Day Co., Inc.

L.O. No.: 5

Appellant: EMPLOYER

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of §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 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 December 19, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Robert Dalton;  
Donna Dalton, Claimant's wife

FOR THE EMPLOYER:

Francis Reilly,  
Timekeeper;  
Larry Crouse,  
Safety Officer

## EVALUATION OF EVIDENCE

The Board of Appeals has reviewed all of the testimony and evidence taken in both hearings in this case. There are two primary issues in this case. First, did the claimant leave his job because of conditions that were dangerous to his life and safety. Second, whether the claimant left his job for a better job.

The evidence with respect to the safety of the trucks the claimant drove was conflicting. Some of the claimant's complaints were about truck number 514, which he really only used on one day and had not used for two months prior to his quitting his job. The Board has discounted these complaints as practically irrelevant to the claimant's working conditions. It is apparent that the claimant did repeatedly list a number of defects on his truck, truck no. 551. The fact that the employer brought only a two day's list of these reports to the hearing lends support to the claimant's testimony that, over a long period of time, he did report defects in the trucks. Most of the defects, however, were not directly related to the safety of the driver. More importantly, the claimant's alleged fear for his safety is belied by the fact that he attempted to obtain his very same job back a few weeks after he quit.

There is little evidence in the record concerning the terms and job conditions of the new job which the claimant was intending to take upon his quitting this employer. The burden of producing this type of evidence was upon the claimant.

## FINDINGS OF FACT

The claimant was employed as a truck driver by the employer, Francis O. Day Company, from March 19, 1984 until he voluntarily quit on October 18, 1984. He later filed a claim for unemployment insurance benefits effective February 13, 1984.

The claimant remained unemployed from October 18, 1984 until June of 1985.

The claimant left his employment because of alleged unsafe equipment which he was required to use on the job. The claimant's normal truck had a number of defects on it from time to time. The employer regularly inspected and repaired the trucks. Some significant repairs to the brakes were done on February 10, 1984, just prior to the claimant's employment. There were a number of things wrong with the truck, but aside from the brakes, which were fixed shortly before the claimant began working, the only other item which posed a serious threat to the claimant's safety was a problem with the transmission. This problem caused it to be difficult to shift the truck from high into low gear. After complaints that were apparently repeated,

the transmission was repaired on October 8, 1984, approximately ten days before the claimant left his employment. After the claimant did leave the employment on October 18th, the transmission was later completely overhauled on November 9th.

The claimant had a verbal promise of a job with a different company, W. Bell Company. This job did not materialize, as the W. Bell Co. imposed a hiring freeze before the claimant was taken on. The claimant was not aware the exact salary or working conditions of this job. After the claimant could not obtain the job, he returned to the employer in this case and sought to get his job back.

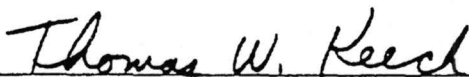
#### CONCLUSIONS OF LAW

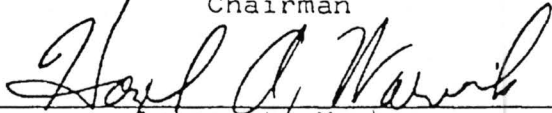
The Board concludes that the claimant voluntarily quit his job without good cause and without valid circumstances. Every significant safety defect which he noted on his truck was repaired prior to the date of his voluntarily quitting his job. With respect to leaving the job for a better job, the Board notes that leaving to accept better employment may be good cause. Baywood v. R.M.R. Corporation (408-BR-82). In that case, the Board ruled that good cause is established only where the claimant accepts a job for a substantially higher salary in the same general field of employment where there is a definite and bona fide offer of employment and where the work is at least as stable and permanent as the previous job. The Board has also ruled that where a claimant resigns employment before being officially hired for the second job, the stability criteria has not been met and a finding of good cause is not supported. With respect to the element of pay, the burden is on the claimant to establish that the new job had better pay or working conditions than the previous job. The claimant in this case has not provided sufficient evidence on this issue. For all of the above reasons, the claimant's leaving of his job to accept another job will be found to be neither good cause nor valid circumstances as those terms are used in §6(a) of the Maryland Unemployment Insurance Law.

#### DECISION

The claimant voluntarily left his job, without good cause or valid circumstances, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning February 13, 1984 and until he becomes re-employed, earns ten times his weekly benefit amount (\$1,650) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Associate Member

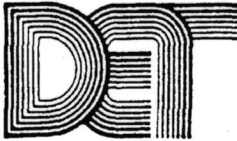
Date of Special Examiner Hearing: October 9, 1985

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - FREDERICK



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

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BOARD OF APPEALS

THOMAS W. KEECH
Chairman
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SEVERN E. LANIER
Appeals Counsel

DECISION

Date mailed: Jan. 14, 1985
Claimant: Robert J. Dalton
Appeal No.: 13021 EP
S. S. No.:
Employer: Francis O. Day Company, Inc. L.O. No.: 05
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 TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 Jan. 29, 1985

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present, accompanied by Witness,
Donna Stultz

Represented by
Francis Reilly,
Timekeeper &
Bill Withers,
Truck Foreman

FINDINGS OF FACT

The claimant was employed by the Francis O. Day Company, Inc. from March 19, 1984 until October 18, 1984 as a truck driver. At the time of his separation from employment, the claimant was earning \$7.50 per hour. The claimant had worked for the predecessor company for some six and one-half years in the same capacity.