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.: 1105-BR-89

Date: Dec. 15 , 1989

Claimant: Kenneth L. Wilkerson

Appeal No.: 8909713 & 8909714

S. S. No.:

Employer: Closet Crafters, Inc.

L. O. No.: 9

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 and whether the claimant is receiving or has received dismissal payment or wages in lieu of notice, within the meaning of Section 6(h) 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 January 14, 1990

—APPEARANCES—

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the Hearing Examiner's decision in case number 8909713, dealing with severance pay under Section 6(h) of the law. It is quite clear from the testimony that neither party

was absolutely certain whether the two checks received were severance pay, pay for past work, or payments made to remunerate the claimant for commissions already earned but not yet paid. The evidence is far from clear as to exactly what these payments were intended to be. In such a case, it is appropriate to make a finding against that party who had the burden of proof on the issue. Since the employer had control of the records in this case, it is appropriate to place the burden on the employer to demonstrate that the payments were severance pay, especially since they were entitled something else. Since the employer did not meet its burden with enough evidence for the Board to find as a fact that the claimant's were severance pay, the Board will affirm the Hearing Examiner's finding that the payments were not severance pay and not deductible from benefits otherwise payable.

With respect to the claimant's separation from employment, dealt with in appeal number 8909714, the Board modifies the decision of the Hearing Examiner. The Board agrees with the decision of the Hearing Examiner that the claimant did voluntarily quit his job within the meaning of Section 6(a) of the law. The Board also agrees that the claimant did have "valid circumstances" for leaving his employment, because there was a substantial cause connected with the conditions of employment.

The Board disagrees, however, with the beginning date of the penalty. On July 14, 1989 the claimant gave notice that he would be quitting on Friday, July 28, 1989. He intended to work the following two weeks. On the following Monday, July 17, 1989 the employer accepted his resignation and determined that he should leave immediately. It is always possible, of course, that a claimant can be discharged during his notice period. See, for example, Salisbury v. Levenson & Klein (395-BH-84), where the claimant, who had already given her two weeks' notice of resignation, was discharged for misconduct which took place after the notice was given. In that case, the separation from employment was considered a discharge, and the claimant was disqualified under Section 6(b) of the law.

This case, however, is closer to the case of Stefan v. Levenson & Klein (1794-BR-82), in which a claimant gave two weeks' notice of resignation, and where the employer, for his own convenience, simply accelerated the leaving date. As the Board ruled in the Stefan case, any penalty imposed under Section 6(a) of the law should take effect on the proposed effective date of the resignation. For this reason, the claimant should be penalized under Section 6(a) of the law, but the penalty should not start until the intended date of

the resignation. In this case, this means that the penalty should not start until after July 29, 1989. For the weeks ending July 22 and July 29, 1989, the reason for the claimant's unemployment was due to having been discharged, but not for any misconduct. For that reason, no penalty shall be imposed during these weeks. The penalty under Section 6(a) of the law for voluntarily quitting the employment should begin after this period.

DECISION

In case number 8909713, the claimant is not in receipt of severance pay within the meaning of Section 6(h) of the Maryland Unemployment Insurance Law. No disqualification- is imposed based upon Section 6(h) of the law.

In case number 8909714, the claimant voluntarily left his employment, without good cause, but with valid circumstances within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from the receipt of benefits from the week beginning July 30, 1989 and the four weeks immediately following.

The decision of the Hearing Examiner is affirmed with respect to case number 8909713 and modified with respect to case number 8909714.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:H
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - TOWSON

Maryland
Department of Economic & Employment Development

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201
(301) 333-5040

-DECISION-

Date:

Claimant:
Kenneth L. Wilkerson

Decision No.: Mailed: 9/8/89

S. S. No.: 8909713

L.O. No.:

Employer:
K L I, Inc.

Appellant: 9
Claimant

Issue:

Whether the claimant is receiving or has received dismissal payments or wages in lieu of notice, within the meaning of Section 6(h) 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, 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 9/25/89

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Gary Lederman,
President
Rick Lohn

FINDINGS OF FACT

The employer is a sub-contractor for builders. He installs mirrors, bath accessories, shelving and showers. From 1986 to July 14, 1989, the claimant worked as a Sales Manager for K L I,

Inc. On February 14, 1989, K L I, Inc. merged with Closet Masters and became Closet Crafters. K L I, Inc. was a very small company and, therefore, the claimant wore many hats and had almost free reign.

When K L I, Inc. and Closet Masters merged to become Closet Crafters, policies and procedures were drawn up. It was during this period that the claimant and his employer began to have disputes over methods of management, pricing, and duties. On Friday, July 14, 1989, the claimant submitted his resignation. The following Monday, he was discharged.

He was given two checks from Closet Crafters dated July 21, 1989 and July 28, 1989. Both were for $341.51 and they were paid to him as a draw against his commissions. I find these payments to be in the nature of wages due rather than severance pay or dismissal payment.

EVALUATION OF THE EVIDENCE

The explanation given by the employer as to whether this was severance pay for work already done lack credibility. If they were in fact for severance pay he could have said so. Instead, he gave a rather complex explanation.

CONCLUSIONS OF LAW

Under Section 6(h) a claimant shall be disqualified from receipt of benefits if he or she is in receipt of dismissal payments or severance pay in excess of his or her weekly benefit amount. The payments received by the claimant were wages due not severance or dismissal pay.

DECISION

The determination of the Claims Examiner is reversed.

The claimant is not in receipt of severance pay, within the meaning of Section 6(h) of the Maryland Unemployment Insurance Law. Benefits are allowed if the claimant is otherwise qualified.

Van D. Caldwell

Van D. Caldwell
Hearing Examiner

Date of hearing: 8/31/89
rc
(7754)-Specialist ID: 09653
Copies mailed on 9/8/89 to:

Claimant
Employer
Unemployment Insurance - Towson - MABS

William Donald Schaefer
Governor
J. Randall Evans
Secretary

1100 North Eutaw Street
Baltimore, Maryland
21201
(301) 333-5040

Maryland
Department of Economic & Employment Development

- DECISION -

Date:

Decision No.: Mailed: 9/8/89

Claimant:
Kenneth L. Wilkerson

S. S. No.: 8909714

L.O. No.:

Employer:
K L I, Inc.

Appellant: 9
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 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 9/25/89

–APPEARANCES—

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Gary Lederman,
President
Rick Lohn,

FINDINGS OF FACT

The employer does sub-contracting work for builders. He installs mirrors, bath accessories, shelving, and showers. From 1986, to July 14, 1989, the claimant worked as a Sales Manager for K L I,

Inc. On February 14, 1989, K L I, Inc. , merged with Closet Masters and became Closet Crafters. K L I, Inc. was a small company, and, therefore, the claimant wore many hats. He had almost free reign.

When K L I, Inc. and Closet Masters merged to become Closet Crafters, policies and procedures were drawn up. The claimant continued to work hard, but he and the employer began to have differences over methods of management, pricing, and his duties. On Friday, July 14, 1989, the claimant submitted his resignation and on the following Monday he was discharged.

CONCLUSIONS OF LAW

Article 95A, Section 6(a) provides that an individual shall be disqualified from 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. The facts established in the instant case do not demonstrate such good cause under the Law. However, Section 6(a) provides that a reduced disqualification may be imposed where the separation is precipitated by (1) a substantial cause connected with the conditions of employment or (2) another cause of such a necessitous or compelling nature that the claimant had no reasonable alternative but to leave the employment. The facts in this case demonstrate such valid circumstances, and therefore, a reduced disqualification is appropriate.

DECISION

The determination of the Claims Examiner is modified.

The claimant voluntarily quit for valid circumstances within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

Benefits are denied for the week beginning July 16, 1989 and the four weeks immediately following.

Van D. Caldwell
Van D. Caldwell
Hearing Examiner

Date of hearing: 8/31/89
rc
(7754)-Specialist ID: 09653