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.: 1171-BR-91

Date: Sept. 26, 1991

Claimant: Nathaniel Barnes

Appeal No.: 9110577

S. S. No.:

Employer: Empire Glass & Mirror, Inc.
ATTN: Tony Gharfeh, Pres.

L. O. No.: 7

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 misconduct, connected with his work, within the meaning of Section 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 October 26, 1991

—APPEARANCES—

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record of this case, the Board of Appeals reverses the decision of the Hearing Examiner. The Board adopts the findings of fact of the Hearing Examiner. However, the Board concludes that these facts warrant a different conclusion of law.

The employer's act of telling the claimant to get his tools and get off of company property amounted to a discharge. The claimant's belief that his employment was terminated was reasonable in light of the circumstances surrounding the employer's statement and the employer's actual words.

In a case of a discharge, the burden is on the employer to show that the claimant had committed acts of gross misconduct or misconduct. The employer has failed to meet this burden.

The claimant reasonably believed that his tax return was withheld because his employer was not making timely payments to the court, of the child support payments he was withholding. (The employer in fact was not making timely payments.) Therefore, the claimant had every right to question his employer about what was happening with the child support deductions. The claimant's questioning of his employer did not amount to gross misconduct or misconduct as defined in Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law.

DECISION

The claimant was discharged, but not for any gross misconduct or misconduct, connected with the work, as defined in Sections 6(b) or 6(c) of the law. The claimant did not voluntarily quit his employment as defined in Section 6(a) of the law.

No disqualification shall be imposed against the claimant due to his termination of employment from Empire Glass & Mirror, Inc., under Sections 6(a), (b) or (c) of the law.

The decision of the Hearing Examiner is reversed.

Donna P. Watts
Associate Member

Associate Member

DW:W
kbm
COPIES MAILED TO:

CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - COLLEGE PARK

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.: 07/22/91

Claimant: Nathaniel Barnes

Appeal No.: 9110577

S. S. No.:

Employer: Empire Glass & Mirror, Inc.

L.O. No.: 07

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON Auqust 6, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Tony N. Gharfeh, President;
Albert R. Wynn, Esq.

FINDINGS OF FACT

The claimant was employed as a glass installer with Empire Glass & Mirror, Inc. from June 22, 1989 until May 16, 1991. The claimant worked full-time and was paid at the rate of $13.50 an

hour.

Pursuant to a court order, the employer was deducting $88.94 a week from the claimant's paycheck for child support payments owed by the claimant.

On May 16, 1991, the claimant had received notice from the Internal Revenue Service that $92 of the claimant's refund on his income tax return had been intercepted due to his past due obligation of child support. The claimant questioned his employer, Mr. Gharfeh, as to whether the weekly deductions from his paycheck had been forwarded to the court. The employer became agitated at the claimant's questioning, and heated words were exchanged. The employer told the claimant to get his tools and get off of company property, but did not specifically tell the claimant that he was fired. The claimant went home and retrieved proof of the IRS interception of his tax refund, and brought it back to the employer. The employer then called the superior Court at the District of Columbia, to discuss the situation regarding the claimant's child support payments, and his garnishment of wages. After this conversation, the claimant left the employer's premises and did not return until several days later to pick up his paycheck. The claimant did not contact the employer prior to that time, to inquire as to the status of his job.

CONCLUSIONS OF LAW

The claimant's testimony that he was fired prior to going home and retrieving the verification of the IRS refund interception is not credible in light of the fact that he later came back, met with the employer and had a telephone conversation, which included the employer and the District of Columbia Superior Court. The claimant was never specifically told that he was fired. The claimant's actions in leaving the work site on May 16, 1991 and not reporting back or inquiring as to his job status, constitutes a voluntary quit, without good cause.

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 will support 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.

DECISION

It is held that the claimant left his employment voluntarily,

without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning May 12, 1991 and until he becomes re-employed, earns at least ten times his weekly benefit amount ($2,150) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

Geraldine Klauber
Hearing Examiner

Date of Hearing: 07/17/91
dma/Specialist ID: 07197
Cassette No.: 7030
Copies mailed on 07/22/91 to:

Claimant
Employer
Unemployment Insurance - College Park (MABS)