



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.: 120-BR-85

Date: February 28, 1985

Appeal No.: 06929

S. S. No.:

L.O. No.: 45

Appellant: EMPLOYER

Claimant: Sandra Ludwig

Employer: Docktor Pet Center
ATTN: Shelby Cooke
Secretary/Treas.

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 MAY BE 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 March 30, 1985

— 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 decision of the Appeals Referee. The record in this case consists of the agency documents in the file, any documentary evidence submitted before the Appeals Referee, and all testimony taken before the Appeals Referee prior to the close of that hearing.

The evidence in this case shows that the claimant was employed for many years on the premises of the Docktor Pet Center in Annapolis, Maryland. When that establishment was taken over by new owners on approximately January 1, 1984, the claimant was asked to remain employed until the new owners were familiar with the business. The claimant stated that she would stay until approximately May of 1984. Other employees stated at various times that they were leaving the establishment, but they were often persuaded by co-workers and management to stay longer.

At one point between January and May, the claimant was approached by one of the new owners, who demanded that she sign a letter of resignation. The claimant refused to sign this letter of resignation. No further action was taken, as the other co-owner of the store arranged that the claimant would not be fired. This action of requesting the claimant to resign was done on account of alleged misconduct on the part of the claimant.

In May of 1984, while one owner was away at a training conference, the other owner telephoned the claimant and notified her not to report back to work and that she would hear from the other owner when he returned from the conference. The return of this other owner from the conference was a point in time at which the claimant had previously stated she wished to terminate her employment. At the time that the claimant was telephoned and asked not to return to work, however, she had no intention of quitting the employment. When the other owner returned from the training seminar, he did not telephone the claimant. The claimant then visited the premises in person and eventually confronted the other owner with the question of whether she had been fired or not. The other owner originally acted as if she resigned. Although he never stated that the claimant was fired, when she pressed the issue of her continued employment his response was: "That's the way it goes."

This case raises a close question of whether the claimant quit her job in January of 1984, effective May of 1984, and merely had the date of her quitting advanced a few days by her employer's action, or whether the claimant was fired from her employment. The claimant was not specifically told she was fired. She was, however, told not to come back for a few days until contacted by her employer. Additionally, the employer never did contact her and, when she confronted the employer, he responded in a way which would indicate to a reasonable person that her employment was terminated.

On the other hand, the claimant had stated in the presence of many people that she did intend to resign the employment at the time when the co-owner returned from the training seminar in May.

Considering all of these factors, the Board concludes the claimant did not voluntarily leave her employment within the meaning of §6(a) of the Maryland Unemployment Insurance Law. The claimant, although she spoke of resigning in May, submitted no written resignation. Other people at the employment site were also talking of resigning at different times, but at least some of them apparently did not do so. The claimant had strenuously resisted resigning when her employer requested that she do so in February. The claimant's actions during the week that she was discharged do not indicate an intent to resign the employment at that time. In conclusion, although the Board believes that a resignation can be made verbally and can constitute enough evidence to constitute a voluntary quit under the Maryland Unemployment Insurance Law, every statement made by an employee that he intends to leave at some point in the future is not necessarily a resignation. The entire circumstances of the situation must be examined. In this case, the claimant certainly did not intend to quit in May, and her previous statements are not held to be a resignation in view of the surrounding circumstances.

Since the claimant was discharged, the burden is on the employer to show that the discharge was for misconduct or gross misconduct connected with the work. In this case, there is no showing of any such misconduct. The employer's testimony establishes at most that the claimant made a few mistakes in ordering. Without specific evidence of misconduct, the employers failed to carry the burden of showing that the claimant should be disqualified under §§6(b) or (c) of the law.

DECISION

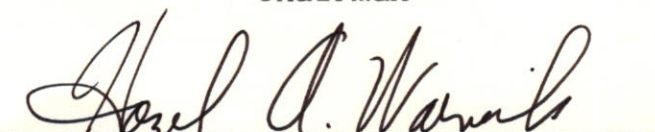
The claimant did not voluntarily leave her employment within the meaning of §6(a) of the law.

The claimant was discharged, but not for misconduct connected with the work within the meaning of §§6(b) or (c) of the Maryland Unemployment Insurance Law. No disqualification is imposed on her based on her separation from Docktor Pet Center. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Appeals Referee is affirmed for the reasons stated above.



Chairman



Associate Member

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - PIMLICO



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Chief Hearing Examiner

— DECISION —

Date: August 3, 1984

Claimant: Sandra L. Ludwig Appeal No.: 06929-JAVA

S. S. No.:

Employer: Docktor Pet Center L.O. No.: 45

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 August 20, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Present via Telephonic Communication
on 7/16/84 in Woodstock, Maryland
Lisa Ludwig - Witness (Daughter)

FOR THE EMPLOYER:

Represented *Keaton*
by Jerry Keaton,
co-owner, and
Brian Powell, *Powers*
Manager via
Telephonic Com-
munication in
Annapolis,
Maryland on
7/16/84

FINDINGS OF FACT

The claimant filed a claim for unemployment insurance benefits effective May 6, 1984. She was employed by Docktor Pet Center, Annapolis, Maryland from January of 1984 to May of 1984. Last position held was that of Manager, working normally twenty-four

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hours a week but varied shifts.

Docktor Pet Center of Annapolis, Maryland was taken over by the present owners on or about January 1, 1984 and it was agreed that the claimant remain on as manager until the employers developed an expertise in the business. Specifically, Mr. Keation was to go to a training school in Boston for training.

The co-owner, Jerry Keation then returned from his training in Boston in the spring of 1984 and the claimant was separated from her employment since she was no longer needed.

It was not the intention of the claimant to voluntarily resign. Last day of work for Docktor Pet Center, Annapolis, Maryland, May 5, 1984.

CONCLUSIONS OF LAW

It is concluded from the evidence that the claimant did not formulate the requisite intent to separate from employment as contemplated by the Court of Appeals in Allen v. Core Target City Youth Program (275 Md. 69).

Therefore, the determination of the Claims Examiner within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law will be reversed and the disqualification imposed rescinded.

The evidence will support a finding that the claimant was separated from her employment for a non-disqualifying reason within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

There is no evidence of misconduct connected with the work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law or for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law.

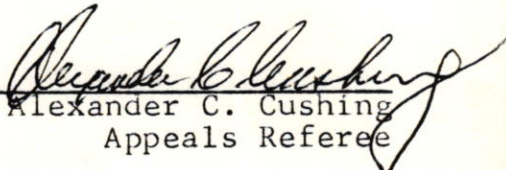
DECISION

The claimant was separated from her employment for a non-disqualifying reason within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is

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imposed based upon her separation from her employment with Docktor Pet Center, Annapolis, Maryland.

The claimant may contact her local office concerning the other eligibility requirements of the law.


Alexander C. Cushing
Appeals Referee

Date of Hearing: 7/16/84
Cassette #5347
ldd/7677
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Copies mailed to:

Claimant
Employer
Unemployment Insurance - Pimlico