

 **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.:	1300-BR-91
	Date:	October 22, 1991
Claimant: Danny Weir	Appeal No.:	9110836
	S. S. No.:	
Employer: Francis O. Day Co., Inc.	L. O. No.:	50
	Appellant:	CLAIMANT

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.

— 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 November 21, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

It is uncontested that the claimant's actual last day of work was October 4, 1990, and that he was disabled, receiving Worker's Compensation benefits and unable to work at this employment until May 13, 1991.

The claimant testified that he called on May 6 but could not reach the foreman, a Mr. Hennessey. He testified that he called and reached Mr. Hennessey on May 13, and that Mr. Hennessey told him that there was no work available but that he, Hennessey, would call the claimant if there was any change in the situation. He testified that other drivers have been laid off since December, with the exception of two hours of work provided on February 13.

The company witness testified that Mr. Hennessey told the claimant to come to work, but that the claimant did not report for work. He testified that the others were laid off, but that their continued unemployment was due to them not calling the employer themselves, since the employer would not call them back when a layoff is over.


The Board finds the claimant's testimony the more credible. His testimony about the May 13 conversation was direct testimony, while the employer's testimony was hearsay. Furthermore, it seems unlikely to the Board that a company would not call its laid-off employees when a layoff was over before it would advertise for new employees in the newspaper. The Board finds as a fact that the claimant was told on May 13 that there was no work for him, and that he has not been called for work since.

Based on the facts found above, it is clear that the claimant did not voluntarily quit his job within the meaning of Section 8-1001.

DECISION

The claimant did not voluntarily quit his employment, within the meaning of Section 8-1001 of the Labor and Employment Article. No penalty is imposed based upon his separation from employment with the Francis O. Day Company, Inc. The claimant may contact his local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

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CLAIMANT

EMPLOYER

OUT-OF-STATE CLAIMS

 **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

CORRECTED

— DECISION —

Claimant:	Danny L. Weir	Date:	Mailed: 7/24/91
		Appeal No.:	9110836
		S. S. No.:	
Employer:	Francis O. Day Co. , Inc.	L. O. No.:	050
		Appellant	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 TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAYBE 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

August 8, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present
(By Telephone)

FOR THE EMPLOYER:

Larry Crousc,
Safety Officer
(By Telephone)

FINDINGS OF FACT

The claimant became unemployed and applied for benefits. The Claims Examiner determined that he voluntarily quit, without good cause or valid circumstances, and the maximum penalty was imposed. He appeals.

The employer constructs highways and roads.

For approximately two years, the claimant was employed as a truck driver.

On or about October 3, 1990, he was injured on the job and was off recuperating from approximately October 4, 1990 to May 13, 1991.

He called the employer on or about May 6, 1991 and again on May 13, 1991 about work.

He was told on May 6 that there was not enough work; on May 13, he was told to return to work. He did not, therefore, I find that he voluntarily quit.

The employer has plenty of work available and is, in fact, advertising for drivers. I; therefore, further, find that the claimant did not take sufficient initiative in ascertaining if there was work available and attempting to return to work.

CONCLUSIONS OF LAW

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.

In voluntarily quit cases, the burden of proof is on the claimant. The claimant failed to carry the burden in this case. The evidence is insufficient to support a finding in his favor.

DECISION

The unemployment of the claimant was due to leaving work 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 September 30, 1990 and until he becomes re-employed and 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 affirmed.

Van D. Caldwell
Van D. Caldwell
Hearing Examiner

Date of Hearing: 7/23/91
ps/Specialist ID: 50510
Cassette No: 7477
Copies mailed on 7/24/91 to:

Claimant
Employer
Out-of-State Claims - (MABS)