

NOTE: See correction in employer's address.
3/1/89, kbm

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

BOARD OF APPEALS

Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	141-BR-89
	Date:	Feb. 23, 1989
Claimant: Marilyn Berg	Appeal No.:	8812795
	S. S. No.:	
Employer: Lee's Boutique	L. O. No.:	23
	Appellant:	CLAIMANT

Issue: Whether the claimant failed, without good cause, to apply for or to accept an offer of available, suitable work within the meaning of Section 6(d) 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, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

March 25, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner and concludes

that there were mitigating circumstances for the claimant's refusal of suitable work under Section 6(d) of the law, and therefore a lesser penalty is appropriate.

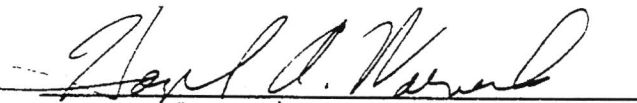
In reaching this conclusion, the Board has not considered the documents sent with the claimant's letter of appeal and has not admitted them into evidence. Based on the evidence already contained in the record, the Board concludes that the claimant reasonably believed that she was only offered work on Saturdays and Sundays, from 10:00 a.m. to 4:00 p.m., for a total of 12 hours per week and only through the holiday season. Even giving the employer the benefit of the doubt, that the employer meant for this offer to include Friday evenings and was for 18 hours per week, the Board finds that the employer failed to communicate this either to the claimant or to the agency.

Since the claimant's prior work for the employer was part-time (18 hours per week), the Board agrees with the Hearing Examiner that this job offer was for suitable work and the claimant's refusal was without good cause. However, since it was for one-third less hours per week and its duration beyond the holiday season was uncertain, the Board concludes that a minimum disqualification is appropriate.


DECISION

The claimant failed, without good cause, to accept suitable work when offered within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning October 23, 1988 and the four weeks immediately following.

The decision of the Hearing Examiner is modified.



Associate Member



Associate Member

Hw:w

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - ELLICOTT CITY

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



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— DECISION —

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Appeal No.: 8812795

S. S. No.:

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L.O. No.: 23

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Since the claimant's prior work for the employer was part-time (18 hours per week), the Board agrees with the Hearing Examiner that this job offer was for suitable work and the claimant's refusal was without good cause. However, since it was for one-third less hours per week and its duration beyond the holiday season was uncertain, the Board concludes that a minimum disqualification is appropriate.

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The decision of the Hearing Examiner is modified.

Hw:w

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - ELLICOTT CITY

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaecher
Governor

-DECISION-

Date: Mailed: January 5, 1989

Claimant: Marilyn J. Berg

Appeal No: 8812795-EP

S. S. No.:

Employer: Dorothy Leona Pirro

L.O. No.: 23

Appellant: Employer

Issue:

Whether the claimant failed, without good cause, to either apply for or to accept an offer of available, suitable work within the meaning of Section 6(d) 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 818, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201 EITHER IN PERSON OR BY MAIL. THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON January 20, 1989. NOTICE APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Marilyn J. Berg - Claimant

Dorothy Leona Pirro
- Employer

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Ellicott City, effective July 10, 1988.

From the favorable determination of the Claims Examiner allowing benefits, the employer filed an appeal.

The claimant had been employed by Dorothy Leona Pirro from January, 1988 to July 1, 1988 as a salesperson in the employer's dress shop. The claimant earned \$5 per hour. She worked three

days per week, at six hours per day or a total of eighteen hours per week. The claimant was laid off for lack of work on or about July 1, 1988 for the duration of the summer.

At the conclusion of the summer, the claimant telephoned the employer to see if work was available. Initially, there was no work available for her. Subsequently, the employer contacted the claimant and advised that her services were needed on weekends in the same job at the same rate of pay. The employer operates her store seven days per week. The employer anticipated providing the claimant from sixteen to eighteen hours per week work over the weekends. The claimant construed the employer's intent as offering her Fours on Saturdays and Sundays only, at six hours per day. The claimant did not understand but did not ask whether she would be working Friday evenings. The claimant understood that she would be working at least two days per week, as opposed to three days per week prior to July 1, 1988. Based thereon, she declined to return to work for the hours available.

The Maryland Job Service at Ellicott City determined that the job offer was not suitable, as it was temporary work only through Christmas holidays, at least.

According to the employer, the claimant would have worked eight hours each on Saturdays and Sundays and three or four hours on Friday evenings.

CONCLUSIONS OF LAW

The claimant was a part-time salesperson, who had been laid off for lack of work by her employer in July, 1988. She was unable to find work from July 10, 1988 through October 29, 1988 and was being recalled by her employer for part-time work comparable to the work she had been doing at the same rate of pay, except that it was possible that her hours of work may have been only sixteen hours per week as opposed to eighteen hours per week, based upon a misunderstanding by the claimant concerning the total number of hours. The claimant believed that she would be working only two days per week at six hours each day.

Section 6(d) of the Maryland Unemployment Insurance Law sets forth certain criteria as to what constitutes "suitable work."

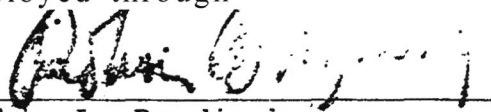
The Law does not specify that "suitable work" is only full-time work. It is clear that "suitable work" may also be part-time work, particularly if the claimant's customary occupation has

been in part-time work. In this case, the claimant was being recalled by her former employer to part-time work, the same occupation, same duties, same location, and same rate of pay that she had been earning. The only conceivable difference may have been that while the employer intended to provide a minimum of sixteen hours of work per week to the claimant, the claimant misunderstood (and did not ask) how many total hours of work was being offered. Clearly, "suitable work" as defined by the Statute was being offered by this employer to the claimant. The issue becomes whether or not the claimant had "good cause" to refuse to accept such "suitable work." The claimant's sole defense is that the employer was not offering a sufficient number of hours of work, and that she had reason to assume that the hours offered were only twelve hours per week based on her prior experience of working six hours per day.

At twelve hours per week, the claimant would have earned a gross amount of \$60 per week, which is in excess of her weekly unemployment insurance benefit amount, although the net amount after taxes might be somewhat less than the weekly unemployment insurance benefit amount. However, the claimant failed to take reasonable steps to definitely ascertain what the total number of hours would be and whether or not weekends included Friday nights. Therefore, I must conclude that the claimant has failed to show "good cause" for failing to accept "suitable work" (as defined by the Statute in Section 6(d) of Article 95A), and benefits must be denied. At the date of the hearing, the claimant is still unemployed and apparently has been unable to locate and secure permanent, full-time, gainful employment. It must be noted that the Statute provides that the length of the claimant's unemployment shall be deemed a criteria for determining suitability and consequently severity of the disqualification to be imposed.

DECISION

It is held that the claimant failed, without good cause, to accept suitable work when offered within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning October 23, 1988 and until the claimant becomes employed and earns at least ten times her weekly benefit amount and thereafter becomes unemployed through of her own.



Robin L. Brodinsky
Hearing Examiner

Date of hearing: 12/19/88
amp/Specialist ID: 23381
Cassette No. 8413
Copies mailed on January 5, 1989 to:

Claimant
Employer
Unemployment insurance - Ellicott City (MABS)