DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383-5032

— DECISION —

DECISION NO.: 1794-BR-82

DATE: December 21, 1982

CLAIMANT: Henry Stefan

APPEAL NO.: 09422

S. S. NO.:

EMPLOYER: Levenson & Klein
c/o Automatic Data Processing

L. O NO.: 40

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.

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 SUPERIOR 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 January 20, 1983

— 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 Appeals Referee and concludes that the Claimant voluntarily quit his job without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

The Claimant clearly stated his intention to quit his job, both on the evening of June 2, 1982 and the next day at a meeting with his supervisor. Even if the Board concluded that his first resignation was done in the heat of anger, the Board must conclude that the Claimant's confirmation of his resignation the next day, after the Claimant had time to reflect on it, evidences a genuine intent to resign. The evidence fails to support a conclusion that the Claimant's reasons for resigning constitute good cause or valid circumstances.

The Appeals Referee placed great importance on the fact that the Employer did not actually accept the Claimant's resignation, but fired him instead. However, Section 6(a) of the law does not require that an Employer accept a resignation in order for it to be a voluntary resignation for the purposes of that Section of the Law. Court and Board cases dealing with this section do not reflect such a requirement. Indeed, it is the intent of the Claimant and not the Employer, that is the determining factor. See, Allen v. Core Target City Youth Program, 275 Md. 69, 338 A2 237 (1975).

The Board concludes that this is a clear case of a voluntary quit. However, since the Claimant did give a two week notice, which the Employer accelerated, the Claimant's penalty under Section 6(a) does not commence until two weeks after his separation from employment.

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 June 17, 1982, and until he becomes re-employed, earns at least ten times his weekly benefit amount ($1,100) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is reversed.

Hazel A. Warwick
Associate Member

Thomas W. Keech
Chairman

W:K
gm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Ellen Stoffer
Automatic Data Processing

UNEMPLOYMENT INSURANCE - EASTPOINT

DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383 - 5040

– DECISION –

DATE: August 19, 1982

AIMANT: Henry Stefan

APPEAL NO.: 09422-EP

S. S. NO.:

MPLOYER: Levenson & Klein
c/o Automatic Data Processing

L. O. NO.: 40

APPELLANT: Employer

SUE: Whether the claimant is subject to disqualification of benefits within the meaning of Section 6(c) of the Law. Whether the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law. 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. Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

NY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT ECURITY OFFICE, OR WITH THE APPEALS DIVISION, **ROOM 515**, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PER-ON OR BY MAIL.

HE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON September 3, 1982

– APPEARANCES –

OR THE CLAIMANT:

Henry Stefan - Claimant

FOR THE EMPLOYER:

Ellen Stoffer - Automatic Data Processing and Robert Wilder - Credit and Office Manager

FINDINGS OF FACT

The claimant was employed in a clerical position with Levenson & Klein from March 9, 1981 until June 2, 1982, when he was separated from his employment. The claimant was earning $205.00 per week at the time of his separation from employment.

The claimant's office was very busy on June 2, 1982. The tempers of both the claimant and his supervisor flared after the supervisor twice told the claimant to wait on a customer when the claimant was already waiting on a different customer.

The second of these incidents occurred ten minutes before the close of the claimant's work day. The claimant informed the supervisor that the claimant was quitting. The supervisor told the claimant that if the claimant was careful, the supervisor would accept his resignation. The claimant told his supervisor that he, the supervisor, had the claimant's resignation. No further words were exchanged. The tone of the words exchanged was argumentative, but not violent. The claimant left work at the scheduled time.

The claimant went to work the following morning to tender his resignation formally. His supervisors attempted to dissuade him from resigning. Again, the situation became argumentative. Finally, the same supervisor with whom the claimant had exchanged words the previous day told the claimant that the claimant's separation from employment was immediately effective and that the claimant should leave. The claimant left.

Later in the week, the claimant was called at home by one of the store owners who told the claimant that the employer regretted losing such a valuable employee over such an unfortunate incident. The claimant was told that he could go to work in another store of the same employer if an opening occurred. In fact, supervisors in another store of the owner were enthusiastic about the possibility of hiring the claimant. Later, the supervisors in the other store told the claimant they would not hire him.

The claimant never accepted employment with the employer at a different store after his discharge. The claimant did not file a claim for unemployment insurance benefits until after the possibility of employment with the employer at another store ended.

CONCLUSIONS OF LAW

Three issues are present for resolution under the Maryland Unemployment Insurance Law in this case.

The first issue is whether the claimant quit his job or was discharged. The employer's representatives referred to Chiveral v. Kwick, Appeal No. 02362, 1980, and Hoffman v. Hecht Co., Appeal No. 01333, 1980, as dispositive of the claimant's eligibility if the claimant resigned. In fact, the claimant's case is

factually distinquished from the two aforementioned Board of Appeals decisions. In both the Chiveral and the Hoffman cases, the respective employers effectively eliminated the notice period of accepted resignations. Accordingly, the respective claimants received unemployment insurance benefits only for the period of time between the effective date of their resignation and the dates of their discharges. In the case to be decided here, the employer never accepted the claimant's resignation. Rather, the employer discharged the claimant while he attempted to tender his resignation formally. The brief exchange of words on June 2, 1982 between the claimant and the supervisor did not constitute an offer and an acceptance of the claimant's resignation. Therefore, for the purposes of Unemployment Insurance Law, Section 6(a) of that Law regarding resignations is inapplicable to the claimant's case.

Rather, Sections 6(b) and 6(c) regarding discharges as defined under the Law are applicable to the claimant's case. Accordingly, the second issue for resolution is whether the claimant is disqualified under the provisions of those two Sections of the Law. The claimant's arguments with his supervisor in these circumstances are insufficient to support any disqualification. The first argument was altogether too short to justify any disqualification based upon it, especially in light of the facts that the supervisor was equally argumentative, the office was extremely busy, and both parties were working very hard. The second quarrel which ended with the claimant's discharge is also insufficient to warrant a disqualification since the employer initiated the conversation to dissuade the claimant from resigning and then discharged the claimant when the claimant stated his reasons for resigning. Accordingly, the claimant is not disqualified from the receipt of benefits under the provisions of Sections 6(b) nor 6(c) of the Law.

The third issue for resolution is whether the claimant is disqualified under the provisions of Section 6(d) of the Law for refusal of suitable work. The basis for such a disqualification would lie in the claimant's refusal to accept employment at another store of the employer. There is some question as to whether a definite offer was made and refused. There is also some question as to whether or not an offer, even if made, was suitable. But, even assuming arguendo that a suitable offer was made and refused, the claimant is not disqualified under Section 6(d) of the Law. In Kramp v. Baltimore Gas & Electric, Appeal No. 05875, 1982, the Board of Appeals reiterated its position that claimants cannot be disqualified under the provisions of Section 6(d) of the Law for refusing suitable work when they are not in claim status. Here, even if the claimant refused suitable

work, he did so before he ever filed a claim for unemployment insurance benefits. Therefore, he was not in claim status at the time of the alleged refusal and cannot be disqualified under the provisions of Section 6(d) of the Law as a result of it.

Since the claimant is not disqualified under the provisions of Sections 6(a), 6(b), 6(c) nor 6(d) of the Law, he is eligible for benefits without any penalty.

DECISION

The unemployment of the claimant was due to a non-disqualifying reason within the meaning of Sections 6(a), 6(b) and 6(c) of the Maryland Unemployment Insurance Law. The claimant did not refuse suitable work which would disqualify him under the provisions of Section 6(d) of the Maryland Unemployment Insurance Law. The claimant is entitled to benefits, if he is otherwise eligible under the Law.

The determination of the Claims Examiner is affirmed.

Leah J. Bartgis
Appeals Referee

Date of hearing: 8/5/82
amp/7295
(Bartenfelder)
4370
Copies mailed to:

Claimant
Employer
Unemployment insurance - Eastpoint

Ellen Stoffer
Automatic Data Processing