

 **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.:	2065-BR-92
	Date:	Nov. 25, 1992
Claimant:	Pamela P. Kimmell 24355 Glenwood Drive	Appeal No.: 9209637
	S. S. No.:	
Employer:	Dennis J. Smith, et al 2000 ...	L. O. No.: 4
	Appellant:	CLAIMANT

Issue: Whether the claimant left 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

December 28, 1992

— 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.

Much of the testimony, and much of the proffered evidence in this case, concerned the issue of whether the claimant resigned or was discharged. Apparently, after the claimant verbally resigned and left the place of employment, several phone contacts took place between the claimant, her husband and the employer. The evidence is disputed with respect to whether the employer rehired the claimant by telephone, and whether the employer then changed his mind. The Board need not resolve this factual dispute, however. For purposes of the Unemployment Insurance Law, the claimant's separation from employment is regarded as a voluntary quit, since she never actually returned to employment and performed services for her employer subsequent to her resignation.

The claimant's reason for quitting, however, constitutes good cause. The Board finds as a fact, based upon the evidence presented, that the claimant's paychecks were repeatedly short, over an 18-month period, despite her repeated complaints and inquiries. The employer did make one small payment to all employees for a shortage caused on one occasion by a computer error. The fact that, as the Hearing Examiner, found, the other shortages were "under consideration" by the employer is irrelevant. If wages are not paid correctly, the damage to the employee has already been done. Efforts to correct the situation are laudable (and legally required) but they have little effect on the issue of "good cause" unless an employer can show that the employee is being totally unreasonable. The timely and prompt payment of all wages due is one of the most basic obligations of an employer to an employee, and an employer's failure to meet this obligation constitutes "good cause" for leaving.

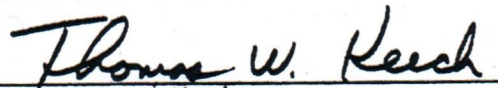
The Board adopts the findings of fact and conclusions of law of the Hearing Examiner with respect to the reopening of the case.

DECISION

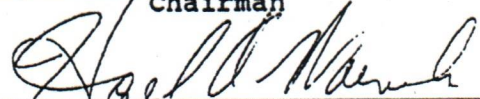
The claimant had good cause to reopen this dismissed case under COMAR §24.02.06.02N.

The claimant voluntarily quit, but for good cause, within the meaning of Section 8-1001 of the Labor and Employment Article. No disqualification is imposed based upon the claimant's separation from employment with Dennis J. Smith et al.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:H
kmb
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CLAIMANT

EMPLOYER

Thomas Wetterer, Esquire

UNEMPLOYMENT INSURANCE - HAGERSTOWN

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501
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Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Date: Mailed: 7/16/92
Claimant: Pamela P. Kimmell Appeal No.: 9299637
S. S. No.:
Employer: Dennis J. Smith, et al. L. O. No. 04
Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001.

Whether there is good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06.02(N).

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

July 31, 1992

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:

Present - accompanied by William
Kimbell, claimant's husband

FOR THE EMPLOYER:

Represented by
Russell Nave, Sales
Manager

FINDINGS OF FACT

The claimant filed for unemployment insurance benefits establishing a benefit year, effective December 22, 1991 and a weekly benefit amount of \$79.00.

After separation from her employment in April, 1992, for which she was disqualified under the provisions of Section 101 of the Maryland Code, she filed a timely appeal and the case was scheduled for hearing in the local office where she had established her claim on May 27, 1992 at 11 a.m. For non-appearance of the claimant/appellant at that time, the case was dismissed. The claimant did not appear because she received a copy of the notice at 2:30 p.m. on the same day of the hearing which was too late to attend the scheduled hearing. The case will be reopened.

The claimant was employed from June 26, 1989 as a telemarketing sales representative, working in the employer's Hagerstown office at a guarantee of \$8.00 per hour for what amounted to full-time work even though the claimant was required to work only 16 hours per week to meet employer's work rules. On April 12, 1992, she quit her employment because of continued dissatisfaction with pay shortages. She estimates that during the last 18 months of her employment, substantial shortages existed every other week. She quit when she was reprimanded for posting a notice on the bulletin board which she believed she had permission to do. The matter of the pay shortages was under consideration by the employer and some of the disputed pay period amounts had been resolved in the claimant's favor.

CONCLUSIONS OF LAW

It is held that the claimant has provided good cause for reopening this case after dismissal has been issued under the appropriate provision of COMAR.

The Maryland Code, Labor and Employment Article, Title 8, Section 1001 (c) provides that an individual shall be disqualified from 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. The facts established in the instant case do not demonstrate such good cause under the Law. However, Title 8, Section 1001 (c) provides that a reduced disqualification may be imposed where the separation is precipitated by (1) a substantial cause connected with the conditions of employment or (2) another cause of such a necessitous or compelling nature that the claimant had no reasonable alternative but to leave the employment. The facts in this case demonstrate such valid circumstances, and therefore, a reduced disqualification is appropriate.

In the present case, the claimant did experience shortages in pay, but the matter was being investigated at the time she determined to quit her employment. Some of the disputed weeks

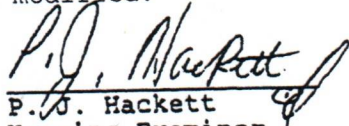
had been resolved in her favor. Under these conditions, therefore, it is held that the claimant voluntarily quit her employment for reasons which do not constitute good cause for her actions, but do constitute valid circumstances permitting the minimum, weekly disqualification under this provision of the Statute. The determination of the Claims Examiner will be modified.

DECISION

The appeal is reopened under COMAR 24.02.06.02(N).

The claimant left work voluntarily, without good cause, within the meaning of Title 8, Section 1001 of the Maryland Code, Labor and Employment Article. Benefits are denied for the week beginning April 12, 1992 and the four weeks immediately following.

The determination of the Claims Examiner is modified.


P. J. Hackett
Hearing Examiner

Date of Hearing: 7/9/92
Specialist ID: 04458
cd/CASSETTE IN FILE

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Claimant
Employer
Unemployment Insurance - Hagerstown (MABS)