

 **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.:	211-BR-90
	Date:	March 2, 1990
Claimant: Lisa M. Mardis	Appeal No.:	8913870
	S. S. No.:	
Employer: Baltimore Sun	L. O. No.:	15
ATTN: Bernie Haske, Sales Mgr.	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 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 AT MIDNIGHT ON April 1, 1990

— 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.

The claimant was hired with the understanding that she would be working in a non-smoking office. Based on the assurances of the employer, at the interview, that it was a non-smoking office, she accepted employment. Due to her sensitivity to smoke, she would not have accepted the job, otherwise. In reality it was not a non-smoking office. Smoking was only prohibited in shared spaces. The employer's more stringent rules, regarding smoking did not come into effect until after the claimant had quit.

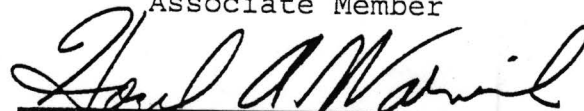
Although the employer was trying to create a better environment, it was not the smoke free environment that the claimant had been lead to believe it was.

DECISION

The claimant left work voluntarily, but for good cause connected with the work, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from employment with the Baltimore Sun. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

D:H

kmb

COPIES MAILED TO:
CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WESTMINSTER



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

— DECISION —

Claimant:	Lisa M. Mardis	Date:	Mailed: 1/3/90
		Appeal No.:	8913870
		S. S. No.:	
Employer:	Carroll County Sun	L.O. No.:	015
		Appellant:	Employer

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 OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON January 18, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant -Present
accompanied by:
Charlotte Mardis/witness

FOR THE EMPLOYER:

Bernie Haske,
Sales Manager
Howard Shank,
Payroll Manager

FINDINGS OF FACT

The claimant was hired as a receptionist/clerk for this suburban addition of the Baltimore Sun Paper. She resigned September 29, 1989 after three months of work. When hired the claimant was told that the employer kept a non-smoking office and in fact it was. After working there two months, two reporters started smoking in the office and it became quite annoying to the claimant. She claims that cigarette smoke is especially

irritating to her and causes an extreme adverse reaction, but the medical documentation she submitted does not support that conclusion. Nevertheless, the claimant complained about the smoking to her supervisor. He spoke to the two reporters, one of whom stop smoking in the office and the second of whom would smoke in her private office with the door closed. Meanwhile, the employer was implementing a smoking policy to provide a smoke restricted environment to insure its employees, customers and visitors with healthier and safer working conditions. The first phase of this policy had already gone into effect and prohibited smoking in many of the shared spaces on the employer's premises. On October 16, 1989, phase two of the policy was to become effective, which permitted smoking only in certain designated smoking areas. The claimant was not aware of a formal two part smoking policy. The claimant also felt that she was the brunt of the smoking reporter's hostile attitude toward non-smokers who stood up for themselves.

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.

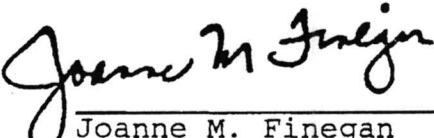
Section 6(a) of the Law specifically provides that "if the individual leave his employment because of a circumstance relating to the health of the individual or the another person who must be cared for by the individual, the individual must furnish a written statement or other documentary evidence of that health problem from a physician or a hospital." The physician's statement provided by the claimant speaks only of an "external and internal nasal deformity" that was corrected in 1987 by surgery. The employer had taken reasonable steps to limit the claimant's exposure to cigarette smoke by speaking to the smokers and implementing its two phase smoking policy. From the other evidence presented at the appeal hearing, it appears that the claimant was dissatisfied with her job and used the smoking issue to justify her quit.

DECISION

The claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning September 24, 1989 and

until she becomes re-employed and earns at least ten times her weekly benefit amount (\$1,650) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is reversed.



Joanne M. Finegan
Hearing Examiner

Date of Hearing: December 6, 1989
lr/Specialist ID: 15703
Cassette No: 10395-89
Copies mailed on January 3, 1990 to:

Claimant
Employer
Unemployment Insurance - Westminster (MAX)