



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.:	228-BR-91
Date:	Feb. 28, 1991
Claimant: Mark L. Levin	Appeal No.: 9015941
	S. S. No.:
Employer: Wycoff Marine	L. O. No.: 9
	Appellant: CLAIMANT
Issue:	Whether the claimant was able to work and available for work, within the meaning of Section 4(c) 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 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 March 30, 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.

The Board adopts the findings of fact of the Hearing Examiner.

The Board concludes that the claimant's separation from Wycoff Marine did not occur on July 12, 1990. On July 12, the claimant merely transferred from a position as a carpenter to a position as a salesman with the same company. A transfer to other job duties is not considered to be a separation from employment. See, Unemployment Insurance Benefits (MICPEL, 1989), p. 19. In fact, the refusal of a transfer to another position within the company is considered to be a voluntary quit. Kramp v. Baltimore Gas & Electric Company (1051-BR-82).

The claimant's transfer from carpenter to salesman thus does not give rise to a penalty under Section 6 of the law. The claimant's actual date of separation from work was August 31, 1990. On that date, he was again transferred from the sales job back to the carpentry job. The transfer was effected because the claimant had made no sales and had collected \$1,800 in unearned commissions in six weeks as a salesman. The claimant agreed to this transfer, but then made himself unavailable to the employer, who had almost immediately tried to schedule his first day of work as a carpenter.

The Board concludes that the claimant abandoned his job when he learned that he was to be transferred back into carpentry. The transfer, however, was reasonable, under the circumstances. Abandoning his job rather than accepting the transfer is a voluntary quit, within the meaning of Section 6(a) of the law. Since the transfer was wholly reasonable, there was neither good cause nor valid circumstances for the voluntary quit. The maximum penalty under Section 6(a) of the law must be imposed.

The Board also reverses the Hearing Examiner's decision with regard to Section 4(c) of the law. Once the maximum penalty has been imposed on a claimant for voluntarily quitting a job, an additional penalty cannot be imposed based upon a refusal to return to the job. Reynolds v. Golden World Travel (591-BR-83). In any case, the refusal of a job at one potential place of employment is properly dealt with under Section 6(d) (refusal of suitable work), not Section 4(c) (availability for work). On the whole, the evidence supporting a 4(c) disqualification is insufficient.

DECISION

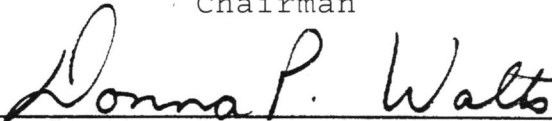
The claimant voluntarily quit his job, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning August 26, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,720), and thereafter becomes unemployed through no fault of his own.

The claimant is not disqualified under Section 4(c) based upon his failure to seek work again at this employer's place of business.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:DW

kbm

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CLAIMANT

EMPLOYER

Wycoff Properties, Inc.

UNEMPLOYMENT INSURANCE - TOWSON

 **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

— D E C I S I O N —

Claimant:	Mark L Levin	Date:	Mailed:	12/31/90
		Appeal No.:		9015941
		S. S. No.:		
Employer:	Wycoff Marine	LO. No.:		09
		Appellant:		Employer

Issue: Whether the claimant was able, available and actively seeking work, within the meaning of Section 4(c) of the Law.
Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) 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 16, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

Joyce Howland,
Vice President and
Owner;
Howard Howland.
President/Owner

FINDINGS OF FACT

The claimant began his employment with Wycoff Marine on April 26, 1990. His last day of work with that company was August 31, 1990.

Testimony at the hearing revealed that the claimant had

originally been hired as a carpenter installing docks. However he had difficulty getting along with the other employees, and after three months in the field, he was transferred to sales. The claimant had told the company that he had extensive sales experience, and he wanted to make this move because he was not happy working in the field as a carpenter. Although the claimant had been paid an hourly rate when he was employed as a carpenter, the company arranged to give him a draw of \$300.00 a week against commissions at the time he was transferred to sales. This new financial arrangement began on July 12, 1990. (see documents from payroll submitted by the employer)

After the claimant had been working in sales for approximately six weeks and had received \$1800.00 in draws without making a single sale, he was told by Joyce Howland, the vice president of the company, that the business could no longer keep him on in a sales capacity. She asked him if he was willing to go back to work in the field as a carpenter, and the claimant told her that he was. Ms. Howland then told him that permits for several new jobs were expected to be approved within several days and that she would be contacting him to return to work as soon as the permits arrived. Nevertheless although Ms. Howland attempted to contact him by phone the following week (the first week of September), and left messages on the claimant's recording machine, she never was able to reach him and he never returned the calls. The claimant owed the company \$1800.00 in draws at that time.

The claimant applied for unemployment benefits in Florida the week after he stopped working in sales, establishing a benefit year effective September 2, 1990. He never contacted his former employer about the work that had been promised and moved to Maryland after several weeks.

CONCLUSIONS OF LAW

The Benefit Determination in this case stated that the information supplied by the employer did not support a finding that the claimant's separation from employment resulted from a voluntary quit and that the circumstances did not indicate that the claimant was discharged for misconduct under Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. Therefore benefits were allowed. However the Appeal Hearing notice stated that the issue was whether the claimant was able and available for work under Section 4(c), which is an issue that may be addressed and resolved by the Hearing Examiner at any time. The present decision will address both the issue of the separation from employment and the issue of the claimant's availability for work.

The testimony revealed that the claimant was first separated from his employment when he left his carpentry job, for which he was paid an hourly rate, and transferred to a sales position where he would be paid a \$300.00 weekly draw against commissions. Because

the claimant became an independent contractor at that point, the employment relationship was severed. Furthermore the advances against commissions cannot be considered "wages" because they are still due and owing to the company.

In effect the claimant was discharged from his employment at the time he was transferred to sales and the issue presented is whether he was discharged for misconduct. The testimony revealed that the claimant was discharged from his carpentry job because he failed to get along with the other employees, but evidence of a personality conflict, without more, is insufficient to establish misconduct. Accordingly the claimant will not be disqualified from benefits on this basis.

With respect to the claimant's availability for work under Section 4(c), the testimony reveals that the claimant was offered re-employment in the field by Ms. Howland on August 31, 1990 at the time his sales relationship ended. The claimant accepted the offer and indicated his willingness to return to an hourly wage as a carpenter. Ms. Howland told him that he could expect to return to work after the work permits were received for several new jobs and that the permits were expected within a matter of days. However the claimant never contacted the company about the work that was anticipated and never responded to their phone calls the following week. Because the claimant made himself unavailable for work that was offered to him, the claimant must be deemed ineligible for benefits under Section 4(c) of the Law.

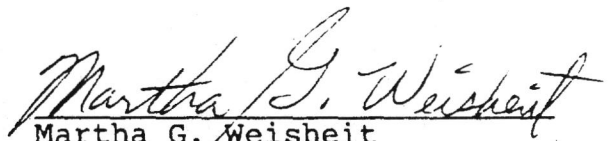
DECISION

The claimant was discharged for reasons which do not constitute misconduct, within the meaning of Section 6(b) or 6(c) of the Law.

The claimant was not able and available for work, within the meaning of Section 4(c) of the Law.

Benefits are denied week beginning September 2, 1990 and until the claimant meets the requirements of the Law.

The determination of the Claims Examiner is reversed.


Martha G. Weisheit
Hearing Examiner

Date of Hearing: 12/19/90
alma/Specialist ID: 09656
Cassette No: 10463
Copies mailed on 12/31/90 to:

Claimant
Employer
Unemployment Insurance - Towson (MABS)