



# 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.:	300-BH-92
	Date:	Feb. 12, 1992
Claimant:	Appeal No.:	9108157
	S. S. No.:	
Employer:	L. O. No.:	43
	Appellant:	CLAIMANT & EMPLOYER
Issue:	whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 8-1001 of the Law.	

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### — 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

March 13, 1992

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### — APPEARANCES —

FOR THE CLAIMANT:

Claimant Present  
Susan Leone

FOR THE EMPLOYER:

Richard Lyschik  
Patricia Lyschik

## EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The claimant in this case contended that she did not quit, but she also provided evidence of reasons which may have justified a quit. The employer testified that the claimant did quit, but he also provided testimony which would have justified his having fired the claimant. The crucial event for determining whether the claimant quit or was fired occurred on January 14, 1991. The testimony concerning that meeting was really not all that different. Both parties agreed that an argument ensued during which the claimant repeatedly stated something to the effect that "I can't take this any more." Both parties agreed that the claimant left the office at the end of this conversation. Although it is difficult to tell who said the crucial words ("I quit" or "Get out of this office") first, the Board will conclude that the claimant did quit her employment, based upon its evaluation of all of the evidence.

The claimant testified that employer assaulted her on January 2, 1991. The claimant attempted to admit evidence that the employer had pleaded nolo contendere to this criminal charge, but the Board cannot base a civil finding of culpability on a criminal plea of nolo contendere. The Board, however, does credit the claimant's testimony in regard to this assault.

## FINDINGS OF FACT

The claimant was employed as a dental assistant for this employer, who runs a small dental office. It was not an amicable office. On January 2, 1991, the employer assaulted the claimant by grabbing her at the back of the neck and shoving her into a room. This was apparently occasioned by his anger over an unfulfilled work assignment. The claimant filed criminal charges. Two days later, the employer's associate dentist left the practice. Shortly thereafter, other employees of the dental practice filed a complaint with the Maryland Occupational Health and Safety Administration concerning work conditions. On January 14, another employee quit. The employer, Dr. Lyschik, was out of town during most of the last several days of the claimant's employment. However, on January 17, he was at work, in the office. The claimant was working with him alone. The claimant heard from the employer's accountant that there was an irregularity on

her payroll forms and that it had been stated that the claimant was reporting zero dependents. The accountant informed the claimant that this had been done at the employer's request. The claimant confronted the employer and a vehement argument ensued. In the course of this argument, the claimant quit her employment.

#### CONCLUSIONS OF LAW

Since the claimant quit her job, she has the burden of showing good cause or valid circumstances as those terms are defined in Section 8-1001 of the Law. The Board concludes that the claimant has met her burden of showing that she had good cause, even though her interpretation of the last confrontation of her employer was that she was discharged and did not quit. Nevertheless, the background of this case shows that the claimant did have good cause. The claimant was working in a stressfull office environment and had been physically assaulted by her employer. Shortly thereafter, her employer left town temporarily, but by the time the employer returned, other employees had resigned and the claimant was left alone in the office with this employer. Soon, a vehement argument about the claimant's tax exemptions ensued. The claimant indicated that she no longer wanted to work in this office and left.

The assault in itself was a sufficient reason to establish good cause within the meaning of the unemployment insurance law. The Board has examined the subsequent events because the claimant did not immediately quit at the time of the assault. The fact that an employee does not immediately quit, however, does not mean that the reason she quit was not good cause. In this case, the employer was not even in the office for days prior to the claimant's last day of work, and she may have felt that it was necessary to keep her employment as long as possible. In addition, it was not until a few days prior to her last day of work that the last other employee in the office quit. The claimant's actions were consistent with those of a person who is attempting to hold out as long as possible and keep the employment, despite circumstances which would amount to good cause for quitting. The vehement argument which took place on her last day of work was apparently the event which convinced the claimant that the total conditions of her employment were untenable. The Board agrees that these conditions did amount to good cause.

DECISION

The claimant voluntarily left her employment, but for good cause within the meaning of Section 8-1001 of the Labor and Employment Article. No disqualification is imposed based upon her separation from this employment.

The claimant may contact her local office concerning the other eligibility requirements of the Law.

The decision of the Hearings Examiner is reversed.

Thomas W. Keech  
Chairman  
Donna P. Watts  
Associate Member

K:D

DATE OF HEARING: January 14, 1992

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON



# 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:	Nancy E. Lockhart	Date:	Mailed: 08/14/91
		Appeal No.:	9108157
		S. S. No.:	
Employer:	Richard V. Lyschik, DDS	L.O. No.:	43
		Appellant:	Claimant

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.  
Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 7(c)(3) 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

August 29, 1991

### — APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant - Present

Richard V. Lyschik;  
Pat Lyschik

### FINDINGS OF FACT

The claimant was disqualified by the Claims Examiner, under Section 6(a) of the Law, from receiving benefits until she earned ten times her weekly benefit amount. The non-monetary determination which informed her of this disqualification, established the last date for filing an appeal as April 19, 1991.

The claimant did not receive the non-monetary determination until April 20, 1991. When she received it, she called the local office and spoke to the person answering the phone, whom she cannot identify, and was told that it was too late to file an appeal. She accepted this, and did not file an appeal until she had second thoughts, after further events in the case, on May 13, 1991. At that time, she listed as her reason for filing a late appeal, that "decision not received until 4/20/91 and became upset and since I had filed assault charges against him, hearing May 7, 1991." While the language is somewhat unclear, it appears that the claimant did not file her appeal because she was upset because she had received the decision late, and had not had resolution of assault charges that she had filed against the employer earlier.

The employer is a dentist, and the claimant worked for him as a dental assistant and receptionist, from early September, 1990 until January 17, 1991, the claimant's last day of work.

At the time of the claimant's separation from employment, her relationship with her employer was strained at best. The claimant had charged the employer with assault and battery (he was later found guilty) and had filed a complaint with the Maryland Occupational Safety & Health Administration (later found unfounded). The claimant did not quit her job because of the assault and battery incident, nor because of the alleged unsafe working conditions. The claimant continued to work for the employer, several weeks after these situations.

On the claimant's last day of work, the claimant and the employer had two confrontations. One was started by the claimant, concerning withholding tax dependent exemptions, and the other was started by the employer, over an alleged improper telephone conversation on the part of the claimant with a patient. It was during the latter episode that the claimant, who tends to be overly emotional, handed in her office key and quit her job.

#### CONCLUSIONS OF LAW

Because the claimant's non-monetary determination was received late, and because she has proven that she had a telephone call with the local office on the 20th of April, she will be given the benefit of the doubt, and it will be found that her appeal was late, with good cause, under Section 7(c)(3) of the Law.

The claimant quit her job. This determination results largely from a credibility finding, after listening to both of the parties and analyzing the evidence. It appears clear that the claimant did quit. The claimant, however, had an abundance of valid circumstances in the case, even though she did not have good legal cause for quitting when she did. The claimant was



being talked to rather strongly by the employer, about her conversation with a patient. There was no need for the claimant to quit at this time, but the claimant is a very emotional person, and reacted emotionally and handed in her key and quit. The valid circumstances in the case are clear. The claimant had been assaulted by her employer, but had not quit, and she had been dissatisfied with the working conditions, although they were later found by the OSHA people to be satisfactory. Therefore, it appears appropriate under all the facts in this case, to impose the minimum disqualification, under Section 6(a) of the Law, of five weeks from the date the claimant filed her claim, effective for unemployment insurance benefits. After that five-week disqualification, the claimant would be eligible for benefits.

#### DECISION

The claimant filed a late appeal, with good cause, within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The claimant voluntarily quit her employment, without a good cause, connected with her work, within the meaning of Section 6(a) of the Law. She is disqualified from receiving unemployment insurance benefits for the week beginning January 13, 1991 and for four weeks immediately thereafter.

The determination of the Claims Examiner is modified to reflect a reduced disqualification, and the correct beginning date of the disqualification.



Martin A. Ferris  
Hearing Examiner

Date of Hearing: 08/07/91  
dma/Specialist ID: 43728  
Cassette No.: 5692  
Copies mailed on 08/14/91 to:

Claimant  
Employer  
Unemployment Insurance - Wheaton (MABS)