

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

**BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK

Associate Member

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 339 -BH-87

Date: May 12, 1987

Appeal No.: 8605562

S. S. No.:

Claimant: Joan Morris

Employer: Maryland National Bank

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 CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

June 11, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Joan Morris - Claimant

FOR THE EMPLOYER:

Tom Henning -
Asst. VP

EVALUTION 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 into this case, as well as the Department of Employment and Training's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed by the Maryland National Bank for over nine years until she voluntarily quit her job on April 9, 1986. She was a senior supervisor at the time of her resignation.

The claimant resigned her job because she was afraid to supervise a fellow employee who was suffering from Acquired Immune Deficiency Syndrome (AIDS). This employee had been out sick for some time. Several weeks prior to his scheduled return to employment, the claimant and other employees were informed by management that he would be returning. Because of the nature of and publicity surrounding this disease, the employer arranged for a physician, Dr. Frank Polk, of Johns Hopkins Hospital, to talk to the employees about this disease in the hopes of quelling some of their fears. Dr. Polk (who also testified before the Hearing Examiner) indicated that the AIDS virus is not spread by casual contact. It is generally contracted either sexually or through blood and blood products. He also indicated that the more advanced the illness is in an individual, the less infectious he is likely to be.

The claimant was not reassured by the doctor's statements. She was particularly concerned that as the afflicted worker's supervisor, she would be touching papers that he had touched and was concerned that if both this individual and herself should get paper cuts (which, she indicated frequently happens in the course of her work) blood from the infected individual might be passed to the claimant.

Consequently the claimant requested a transfer. The employer agreed to put her on the transfer list but would not give her an immediate or emergency type of transfer. When she learned that the individual was returning to work the next day and that she would not be transferred immediately, she decided to resign her job.

CONCLUSIONS OF LAW

This is a difficult case involving the sincere but medically unsubstantiated fears of the claimant concerning a disease that is apparently always fatal and about which much is still unknown. However, the employer in this case did go to great lengths to provide both the employees, including the claimant, and this agency with current up to date and expert medical

information. Although the Board sympathizes with the claimant, the Board must base its decision as to whether she had good cause to quit, on the evidence before it and cannot base it solely on the unsupported fears of the claimant. The claimant has the burden of proof in a case of voluntary quit and she has failed to meet her burden to show that she had good cause or valid circumstances for quitting.

Contrary to the conclusions of the Hearing Examiner below, the Board does not find that the employer misled the claimant in any way. Further, the employer has pointed out that as a federally regulated bank, it has an obligation under federal law not to discriminate against those with a handicap. Although neither the federal government nor the state of Maryland has ruled that a person with AIDS is a handicapped person, many states have already done so. Further, in the recent Supreme Court case, School Board of Nassau County Florida, et al. v. Arline No. 85-1277 (March 3, 1987), the Supreme Court found that a person suffering from a contagious disease, (tuberculosis), is a handicapped individual who falls under the protection of the Rehabilitation Act of 1983 which states, inter alia:

No otherwise qualified handicapped individual in the United States, as defined in Section 706 (7) of this title, shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, under any program or activity receiving Federal financial assistance . . ." 29 U. S. C. Section 794.

Thus, in attempting to comply with the federal law, the employer in this case made accommodations to allow the employee suffering from AIDS to return to work, based on a reasonable medical judgment¹ that this individual would not be a risk to other employees¹. Since the claimant has failed to provide

¹ In School Board of Nassau County v. Arline, supra, the Supreme Court listed the basic factors it concluded should be considered in determining whether a handicapped individual with a contagious disease is "otherwise qualified" for the job in question. Citing the amicus American Medical Association brief, it listed the following factors:


"[findings of] facts, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm.

sufficient evidence that working with this individual would be a danger to her health, the Board must conclude that she voluntarily resigned her job without good cause or valid circumstances within the meaning of Section 6(a) of the law.

DECISION

The claimant left 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 April 6, 1986 and until she becomes reemployed, earns at least ten times her weekly benefit amount (\$1750.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K

kmb

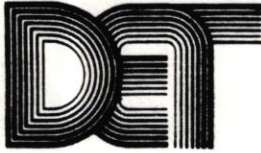
DATE OF HEARING: April 14, 1987

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

(301) 383-5040

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

DECISION

Date: Mailed: 10-6-86

Claimant: Joan Morris

Appeal No.: 8605562-EP

S. S. No.:

Employer: Maryland National Bank

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 FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON October 21, 1986

APPEARANCES

FOR THE CLAIMANT:

Joan Morris - Claimant
Linda Malczewski and
Ervenia Alston - Witnesses

FOR THE EMPLOYER:

John Henning -
Assistant Vice
President and W. J.
Voorhees
Dr. Frank Polk -
Witness

FINDINGS OF FACT

The claimant was employed by the Maryland National Bank as a senior supervisor at the time of separation from employment. At that time, she was earning \$12.01 per hour. She had worked for Maryland National Bank from September 27, 1976 until she quit her job on April 9, 1986.

The claimant quit her job because she did not wish to directly and closely supervise an employee who was returning to work and who had acquired immune deficiency syndrome (hereinafter AIDS).

The claimant expressed concern when she learned that the AIDS patient was returning to work and stated that she did not wish to supervise that person. When she did, she was repeatedly told that she need not worry. She was told that her job was not in jeopardy and that it would all work out. However, shortly before the patient was to return to work, the claimant continued her insistence that she did not wish to supervise a patient with that disease, and at that time was told that she would have to. She then quit her job. The claimant had asked for a transfer, and the employer denied the transfer to the claimant because it felt that everyone would ask for a transfer in order to be away from a person with this fatal, infectious disease for which there is no known cure.

The employer had a physician appear before its personnel to describe the disease and how it is transmitted, and in his opinion, the lack of any serious threat to the health of persons associating with the AIDS patient in the work environment. He also discussed the possibility of a person getting AIDS by handling papers which the AIDS patient had handled. He did this in response to a question. He could not honestly say, of course, that if some blood of the AIDS victim got on a paper due to a paper cut and was promptly transmitted to an open wound of the persons subsequently handling the papers that that person would not get AIDS.

The physician distinguished certain other information brought to his attention by saying that the disease has not been shown to be transmitted by mosquitos or other insects, although it has been found in insects, including roaches. He also stated that certain research efforts conducted by other physicians, which have shown that the AIDS virus can survive on surfaces outside the body of the infected person, was not a good research product because the concentrations used on the surfaces in the tests were not typical of the concentrations of the AIDS virus found in the materials which transmits AIDS in a sick person. The physician further stated that the disease could only be transmitted by exchange of body fluids, such as blood and semen.

Finally, the physician stated that the reaction of the claimant in this case was not unusual, but that that attitude is being changed by education.

CONCLUSIONS OF LAW

The claimant voluntarily left her employment, with good cause connected with her work, within the meaning of Section 6(a) of the Law. In order to decide this in the instant case it is not necessary to say that a person has a right to refuse to associate with and supervise in the work place a person suffering from the AIDS disease, although such a finding would not now be entirely excluded under the present state of medical knowledge. It is enough in this case to say that the employer treated the claimant in a fashion which justified her quitting. The employer denied the claimant a transfer because he feared that other persons would ask for a transfer. It misled her throughout the period when she was expressing her doubt about working with a person infected with AIDS by telling her that her job was not in jeopardy, and then at the last minute, denying her a transfer and telling her that she would have to supervise the AIDS patient, if she wished to remain employed. That the claimant's reaction was not unusual was established by the testimony of the physician. The same conclusion was also shown by the reactions of other employees at the employer's premises and by the reaction of the employer itself in refusing the claimant a transfer for the reason that it gave.

DECISION

The unemployment of the claimant was due to voluntarily leaving her employment, with good cause connected with her work, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is not disqualified from receiving unemployment insurance benefits by reason of her separation from employment on April 9, 1986.

The determination of the Claims Examiner is reversed.


Martin A. Ferris
Hearing Examiner

Date of hearing: 9/15/86

amp/S. Holt/6026,6017
Copies mailed on October 3, 1986 to:

Claimant
Employer
Unemployment insurance - Eastpoint