

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street  
Baltimore, Maryland 21201  
(301) 333-5033

**BOARD OF APPEALS**  
Thomas W. Keech, Chairman  
Hazel A. Warnick, Associate Member  
Donna P. Watts, Associate Member

William Donald Schafer, Governor  
J. Randall Evans, Secretary

## — DECISION —

|                                   |                     |
|-----------------------------------|---------------------|
| Decision No.:                     | 399-BH-88           |
| Date:                             | May 20, 1988        |
| Claimant: Dennis Perry            | Appeal No.: 8612871 |
|                                   | S. S. No.:          |
| Employer: Fredco Construction Co. | L. O. No.: 45       |
|                                   | 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON June 19, 1988

## — APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Fred Maxcy -  
Owner

## 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.

## FINDINGS OF FACT

The claimant was employed as a common laborer. On some occasions, the claimant would be picked up by the employer and driven to the job site. The employer did this as an accommodation for the claimant and other employees. On other occasions the claimant would ride with friends to the job site. On those days when the claimant rode with the employer, the employer would pick the claimant up at the Bromo Seltzer Building, on Lombard and Eutaw Streets at 6:00 a.m. On the morning in question, the employer arrived at the Bromo Seltzer Building but the claimant was not there. This had happened before. The employer called the claimant and told him, "From now on I'm not going to pick you up". The claimant responded, "OK". The claimant did not show up for work the next day or since.

The employer had no contractual obligation to provide transportation.

The claimant had access to a car, namely, his own. The employer never terminated the claimant. The claimant's job was available for at least another two months following the incident. The claimant need only have showed up at the job site in order to continue employment.

## CONCLUSIONS OF LAW

The claimant's actions, not showing up at the job site, clearly establish a voluntary quit within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. An intention to quit one's job can be manifested by actions as well as words, Lawson v. Security Fence Company, 1101-BH-82. The only question is whether or not the claimant had good cause or valid circumstance. Only a cause which is directly attributable to, arising from or connected with the conditions of employment, or actions of the employer may be considered good cause. Those factors do not exist in this case. Only a substantial cause which is directly attributable to, arising from or connected with the condition of employment or actions of the employer or another cause of such a necessitous or compelling nature that the individual had no reasonable alternative other than to leave the employment may be

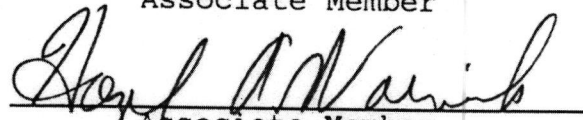
considered a valid circumstance. Those factors do not exist in this case, either. The claimant was not terminated. He had employment available for him with the employer. The only change was that now the claimant had to ride with his friends as he had done on several occasions or drive himself. There was no evidence provided to support the finding of a contractual obligation on the part of the employer to provide transportation to the claimant.

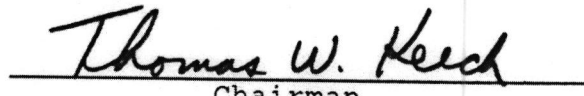
DECISION

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. He is disqualified from receiving benefits from the week beginning June 1, 1986 and until he becomes reemployed, earns at least ten times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Associate Member

  
\_\_\_\_\_  
Chairman

D:H:K

kmb

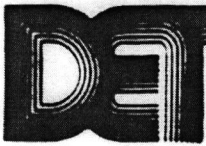
DATE OF HEARING: May 3, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



DEPARTMENT OF EMPLOYMENT AND TRAINING

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STATE OF MARYLAND
William Donald Schaefer

BOARD OF APPEALS

THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
Associate Member
SEVERN E. LANIER
Appeals Counselor
MARK R. WOLF
Chief Hearing Examiner

- DECISION -

Claimant: Dennis Perry

Date: Mailed July 2, 1987

Appeal No.: 8612871

S. S. No.:

Employer: Fredco Construction Co.

L.O. No.: 45

Appellant: Employer

Issue: Whether the Claimant was suspended or discharged for misconduct, or gross misconduct, within the meaning of Section 6 (b) or 6 (c) of the Law.

- NOTICE OF RIGHT TO PETITION FOR REVIEW -

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 July 17, 1987

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER

PROCEDURAL FINDINGS OF FACT

This case was remanded by the Board of Appeals pursuant to the following remand order:

"This case is remanded to the Hearing Examiner for a new decision, without a new hearing. The present decision contains contradictory statements in the Conclusions of

Law with respect to whether the Claimant's abandonment of his position was a voluntary separation or not. There is also an error of law in the Decision paragraph since the Claimant cannot be granted benefits without a penalty if he did voluntarily quit without good cause.

"This decision should be mailed within 20 days of the date of this order."

#### FINDINGS OF FACT

The Claimant worked for approximately six months as a laborer. The employer would meet him at the Bromo Seltzer building at Lombard and Eutaw Streets at about six each morning and take him to various job sites. The Claimant was on time for work but the employer did not pick him up. The next day the Claimant was told that he would no longer be picked up and taken to various job sites by the employer. He was also told if he didn't show up for work he would be "replaced".

The reason that the employer provided transportation to job sites is that the employer knew the Claimant had no personal transportation whatsoever when the Claimant accepted the job. The employer knew that the Claimant had to rely upon public transportation only. He knew that the Claimant could not get to job sites because some of them were located near Washington. The employer had always previously provided transportation to and from the pick up point at the Bromo Seltzer building in Baltimore to the various job sites. Now the employer refused to do so and so the Claimant was separated from employment.

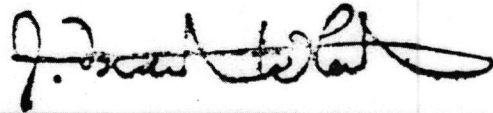
#### CONCLUSIONS OF LAW

The overwhelming preponderance of the evidence shows that the Claimant should not be denied Maryland Unemployment Insurance benefits. There is no evidence to support a finding that the Claimant voluntarily quit his employment. While it is recognized that transportation is generally the responsibility of the employee, the facts in this case support a different finding. The terms of the contract of hire were that the employer was to meet the Claimant at a pick up point and the employer had the responsibility to take the Claimant to the various job sites, since the Claimant had no private transportation. The employer altered the terms of the contract when the employer discontinued picking up the Claimant. He knew that the Claimant would then be separated from employment. In order to disqualify a Claimant under Section 6 (a) of the Law the Claimant has to voluntarily of his own free will and accord, quit the job. In this case the

Claimant did not voluntarily quit his job. He was ready, willing and able to continue the transportation arrangement namely to go to the pick up point and be transported by the employer thereafter. The evidence absolutely shows that the Claimant cannot and should not and will not be disqualified from the receipt of Maryland Unemployment Insurance Benefits pursuant to Section 6 (a) of the Law.

DECISION

The unemployment of the Claimant was caused by separating from employment for a non disqualifying reason pursuant to Section 6 (a) of the law. There is no denial of Maryland Unemployment Insurance benefits. The determination of the Claims Examiner is affirmed.



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J. Martin Whitman  
Hearing Examiner

Date of Hearing: December 16, 1986

Cassette: 8069 (Holcomb)

Copies Mailed on July 2, 1987 to:

Claimant

Employer

Board of Appeals

Unemployment Insurance - Northwest (PRE MABS)