



**DEPARTMENT OF EMPLOYMENT AND TRAINING**

**BOARD OF APPEALS**

**1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201**

**383 - 5032**

**-DECISION-**

**THOMAS W. KEECH**  
Chairman

**HAZEL A. WARNICK**  
**MAURICE E. DILL**  
Associate Members

**SEVERN E. LANIER**  
Appeals Counsel

**STATE OF MARYLAND**  
**HARRY HUGHES**  
Governor

**CLAIMANT:** Angelo Coward

**DECISION NO.:** 453-BH-84

**DATE:** May 8, 1984

**APPEAL NO.:** FSC-705

**S.S.NO.:**

**EMPLOYER:** Randolph Phipps Construction  
Company, Inc.

**LO. NO.:** 40

**APPELLANT:** EMPLOYER

**ISSUE** Whether the claimant failed, without good cause, to accept suitable work when offered to him within the meaning of §6(d) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

June 7, 1984

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**-APPEARANCE-**

**FOR THE CLAIMANT:**

**FOR THE EMPLOYER:**

Angelo Coward - Claimant

Randolph Phipps -  
President

**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 Employment & Training's documents in the appeal file.

The claimant's testimony before the Board was not only directly contradicted by the employer, but by his own statements to the Claims Examiner, as evidenced by the agency Form 221 in the record. The Board also notes that the claimant's statement on the 221 form contradicts some of his testimony before the Appeals Referee. Therefore, the Board does not find the claimant's testimony to be credible. The Board does find the testimony of the employer's witnesses, particularly the supervisor who testified before the Appeals Referee and who had direct contact with the claimant, to be credible.

#### FINDINGS OF FACT

The claimant is a steamfitter and a member of the Sprinkler Fitters Union. The claimant had been laid off from his union work and obtained several assignments with the Phipps Construction Company, the employer in this case. One of his assignments was performing work at Marketplace in downtown Baltimore. Following this, he was assigned to work at several other locations, including Morgan State College. When the job was completed at Morgan State, the employer offered the claimant a job at Marketplace again. The claimant refused this offer because he was a member of a union and his union was picketing the Marketplace site to protest the City's hiring of non-union contractors.

The Board finds as a fact that the job offer to the claimant was due to a contract that the employer had to do a job at Marketplace and was in no way due to a vacancy created as a result of the union protest or any other labor dispute.

#### CONCLUSIONS OF LAW

The Board of Appeals concludes that the claimant refused to accept suitable work when offered to him, without good cause, within the meaning of §6(d) of the law.

The Appeals Referee concluded that the job offered was not suitable pursuant to §6(d)(2) because of the union protest at the job site. We do not agree. Section 6(d)(2) provides that:

"Notwithstanding any other provisions Of this Article, no Work shall be deemed suitable and benefits shall not be denied under this Article to any otherwise eligible individual for refusing to accept new work. . . if the position offered is vacant due directly to a strike, lockout, or other labor dispute."

[Emphasis added.]

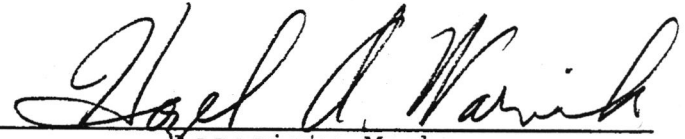
The uncontroverted evidence is that the position offered was not vacant due to a labor dispute, but was available due to the ordinary course of business of the employer.

The claimant has offered no other explanation or justification for his refusal of the job. Therefore the maximum penalty is warranted.

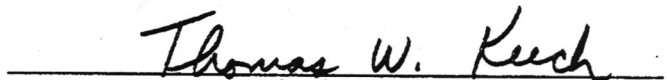
DECISION

The claimant failed, without good cause, to accept available suitable work when offered to him, within the meaning of §6(d) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning July 31, 1983 and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$1530.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is reversed.

  
Associate Member

  
Associate Member

  
Chairman

W:D:K

kmb

DATE OF HEARING: February 21, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Ernie Greco, Asst., to the President  
Metropolitan Baltimore Council of AFL-CIO

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF HUMAN RESOURCES  
 EMPLOYMENT SECURITY ADMINISTRATION  
 1100 NORTH EUTAW STREET  
 BALTIMORE, MARYLAND 21201  
 383 - 5040

BOARD OF APPEALS  
 THOMAS W. KEECH  
 Chairman  
 MAURICE E. DILL  
 HAZEL A. WARNICK  
 Associate Members  
 SEVERN E. LANIER  
 Appeals Counsel  
 MARK R. WOLF  
 Administrative  
 Hearings Examiner

STATE OF MARYLAND  
 HARRY HUGHES  
 Governor  
 KALMAN R. HETTLEMAN  
 Secretary

- DECISION -

DATE: Dec. 21, 1983  
 APPEAL NO.: FSC 705  
 S. S. NO.:  
 EMPLOYER: Phipps Construction Company  
 L. O. NO.: 40  
 APPELLANT: Claimant

ISSUE: Whether the claimant failed, without good cause, to accept suitable work when offered to him within the meaning of Section 6(d) 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON Jan. 5, 1984

- APPEARANCES -

FOR THE CLAIMANT:

Present, accompanied by Ernie Grecco,  
 Assistant to President, AFL-CIO

FOR THE EMPLOYER:

Represented by  
 Alvin Jenkins,  
 Superintendent

FINDINGS OF FACT

The claimant is a steamfitter by trade and is now and has been a member in good standing of local 536, Sprinkler Fitters Union, AFL-CIO, for about 12 years. When he is employed at his regular trade at a job covered by a collective bargaining agreement between his union and an employer, his earnings approximate \$17.00 an hour.

The claimant obtained employment as a laborer at \$7.00 an hour for Phipps Construction Company and worked for this employer for about two and one-half months until August 3, 1983. This was non-union "construction work. During the period of employment, the claimant worked at several locations in the Baltimore area including Northern Parkway and Reisterstown Road, Market Place, a job on Amity Street and at Morgan State University which was the final job site that he worked at for this employer.

At the completion of all of the work that the employer had available for the claimant at the premises of Morgan State, the claimant was offered work at Market Place. The claimant refused this offer of work because at the time it was made, his union was picketing that construction site. He was unwilling to cross the picket line of his union because of his union principles and because if he did so, it would subject him to union penalties. The Phipps Construction Company was not being struck, but the Market Place job site on which Phipps and various other construction companies were working were involved in the strike by the claimant's union.

CONCLUSIONS OF LAW

Among other things, it was the claimant's contention that he was afraid to cross the picket line because of the possibility of physical violence, but this contention is rejected by the Referee because the evidence presented did not show any threat of violence.

The question to be resolved is whether or not the job offer was suitable. Section 6(d)(2) of the Maryland Unemployment Insurance Law provides, in pertinent part:

"Notwithstanding any other provisions of this Article, no work shall be deemed suitable and benefits shall not be denied under this Article to any otherwise eligible individual for refusing to accept new work . . . if the position offered is vacant due directly to a strike, lockout, or other labor dispute."

Note that the opening phrase in that proviso (not withstanding any other provision of this article) gives it overriding effect over all other provisions of the State Law.

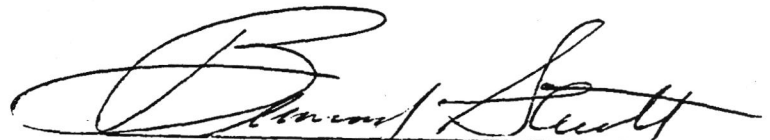
When a material change is made by the employer in the terms or conditions of employment, this has the effect of terminating the existing contract of employment and is an offer of "new work." A proposed change in the work site would be tantamount to a termination of the existing contract and an offer of new work. When the employer in this case had no more work for the claimant at Morgan State and offered the claimant work at Market Place,

this was an offer of "new work" as described above. Although the claimant's particular employer was not involved in a labor dispute, the entire Market Place job was involved in a strike and this includes all jobs at that site. Since the job offer was vacant because of a labor dispute, it was not suitable, and the determination of the Claims Examiner that the claimant refused suitable work shall be reversed.

The Federal Unemployment Tax Act requires this exception from disqualification to be included in every State Law as a condition of conformity with Federal Requirements. The interpretation of new work as expressed above, is consistent with that of the United States Department of Labor as expressed in Unemployment Insurance Program Letter No. 984, dated September 20, 1968.

DECISION

The determination of the Claims Examiner that the claimant failed to accept available, suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law is reversed and the denial of benefits for the week beginning July 31, 1983 and until the claimant becomes reemployed and earns at least ten times his weekly benefit amount (\$1,530.00) is rescinded.



Bernard Streett  
Appeals Referee

Date of hearing: Nov. 8, 1983

jlt

(8286-Hardin)

Copies mailed to:

Claimant

Employer

Unemployment Insurance - Eastpoint

Ernie Grecco