



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.:	598-BR-91
	Date	May 23, 1991
Claimant: Kenneth Penson	Appeal No.:	9103455
	S. S. No.:	
Employer: Southern Galvanizing Co.	L. O. No.:	50
	Appellant:	CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance 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

June 22, 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 claimant worked in a non-union position in maintenance for this employer, beginning January 23, 1990. His last day of work was January 6, 1991.

The company had been experiencing a slow period and laying off a number of employees. On January 6, 1991, the employer informed the claimant that he was laid off. The length of time of the layoff was indeterminate, but it was anticipated that he would be back to work within three or four weeks. No definite date of return was given to the claimant. On January 9, 1991, the claimant picked up his pay check. He inquired about a definite date to return, but the employer could not give him one. The claimant informed the employer that he was leaving for Texas, a state from which he had originally come.

Later that afternoon, the employer decided to recall some of its employees, including the claimant, beginning on the midnight shift that night. The employer, however, knew that the claimant had already left for Texas by this time. The employer had a phone number for the claimant in Texas, but it assumed that this would not be a correct number anymore. In addition, the employer was aware that the claimant was on a bus and would not even arrive in Texas until after the midnight shift had begun. There was no further contact between the claimant and the employer.

The Board concludes that the claimant was laid off from his employment on January 6, 1991. He did not quit his employment. A person who is not currently employed cannot quit within the meaning of Section 6(a) of the law. Laster v. Manpower, Inc. (220-BR-90). The claimant was on an indefinite layoff at the time that he left for Texas. Since he was not employed, his leaving for Texas did not constitute a voluntary quit.

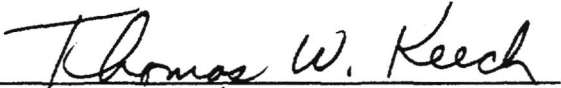
A claimant may be penalized under Section 6(d) of the law for failure to accept suitable work when his old job is offered back to him. In such a case, the burden shifts to the claimant to show that the work is not suitable. Bishton v. Baltimore County Dept. of Aging (879-BR-83). In this case, however, the claimant was never actually recalled to work. At the time of his last contact with the company, the company still had an indefinite layoff in effect. After the employer made the decision to end the layoff and recall the claimant, the employer never contacted the claimant with this offer. The claimant therefore cannot be considered to have refused work within the meaning of Section 6(d) of the law, since the work was never offered him.

DECISION


The claimant did not voluntarily quit his employment within the meaning of Section 6(a) of the law. He was laid off, but not for any misconduct within the meaning of Section 6(b) or

(c) of the law. There was no offer of suitable work within the meaning of Section 6(d) of the law. No disqualification is imposed on the claimant based on Section 6(a), (b), (c) or (d) of the Maryland Unemployment Insurance Law. The claimant may contact his local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:HW

kbm

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CLAIMANT

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OUT-OF-STATE CLAIMS



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:	Kenneth Penson	Date:	Mailed: 3/26/91
		Appeal No.:	9103455
		S. S. No.:	
Employer:	Southern Galvanizing Co.	L.O. No.:	050
		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.

— 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 April 10, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:	FOR THE EMPLOYER:
Claimant - Present	Donna Klinger, Payroll Clerk (Via Telephone)

FINDINGS OF FACT

The claimant worked for the employer from January 23, 1990 until January 6, 1991. He was employed as a maintenance person and earned \$7.94 per hour.

The claimant voluntarily quit on or about January 10, 1991. The

claimant was laid off from work on the morning of January 6, 1991. The claimant was told that the layoff could be a week or two, or could last until the end of the month of January, 1991. The claimant was a good employees and he was one of the last employee to be laid off.

On or about January 9, 1991, the claimant informed the employer that he was leaving for Texas and wished to pick up his last paycheck. The claimant did not leave a forwarding address or anyone that the employer could contact if work became available. The claimant moved to the State of Texas.

On the afternoon of January 9, 1991, the employer became aware that there would be work available for the third shift starting January 10, 1991. The claimant was a worker on the third shift. However, the claimant had already left for Texas and employer did not have any way to contact the claimant. The claimant would have been called back to work on the morning of January 10, 1991 and would have steady worked thereafter.

CONCLUSIONS OF LAW

Article 95A, Section 6(a) provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause or valid circumstances, within the meaning of Section 6(a) of the Law.


The claimant moved to Texas without giving the employer a contact person or a telephone number where the claimant could be reached. The claimant was laid off for approximately two days. Thereafter, there was full-time work available for the claimant. The claimant did not contact the employer until several weeks later. This above action constitutes a voluntarily quit without good cause or valid circumstances, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

DECISION

The claimant voluntarily left his employment, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

The claimant is disqualified from receiving benefits for the week beginning January 6, 1991 and until he becomes re-employed and earns at least ten times his weekly benefit amount (1,820) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is modified.


Kevin O'Neill
Hearing Examiner

Date of Hearing: 3/22/91
ps/Specialist ID: 50507
Cassette No: 2594
Copies mailed on 3/26/91 to:

Claimant
Employer
Out-of-State Claims - (MABS)