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.: 609-BR-90

Date: June 21, 1990

Claimant: Marcus L. Williams

Appeal No.: 9004618

S. S. No.:

Employer: Suggs Transportation Services
ATTN: Harold Suggs

L.O.NO.: 50

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or 6(c) 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 MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDENT 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 July 21, 1990

—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 was employed from February 21, 1989 through February 23, 1990. He began as a part-time employee. The claimant proved to be a dependable employee, and he was eventually given the job as a driver of a shuttle bus. He made $8.25 per hour working full-time in that position.

In early November of 1989, the claimant was removed from that position and put in the position of substitute driver. This was done because he had had numerous accidents and had not always promptly completed the accident reports. By that point, the claimant had had five accidents.

The claimant had three further accidents between then and February 23, 1989, his last day of work. He was warned repeatedly by his employer about his careless driving. By February 23, 1990, he had had a total of eight accidents. Two of them were concealedly not his fault. The other six were either caused by his negligence or at least had such elements of negligence attributable to him that the employer's insurance company paid a claim as a result of his actions. The employer's insurance company notified the employer that it would no longer insure the employer if the employer continued to employ the claimant as a driver.

The employer notified the claimant on February 23, 1990 that he could no longer work as a driver. He was told, however, that he could continue to work for the employer in another position in about one week. The other position would have been a fill-in position, but work definitely would have been available. The claimant would have made less money, approximately 50 to 75 cents an hour less.

The claimant did not return to take this position the following week. Instead, he filed for unemployment insurance benefits a few days later, stating that he had been discharged as a driver. He did not visit the employer's premises again until two weeks later, and then even then it was only for the purpose of picking up his paycheck.

The Board concludes that the claimant was not discharged at all. He was suspended for one week and transferred to another position. The transfer was a demotion, since the claimant apparently would have had less responsibility and definitely would be getting less pay.

The Board has repeatedly ruled that the refusal to accept a transfer is a voluntary quit within the meaning of Section 6(a) of the law. Kramp v. Baltimore Gas & Electric Company (1051-BR-82). This quit may, however, be for "good cause" if the transfer is shown to bring about a detrimental change in the employment conditions. Marion v. Dr. David Chiron (1106-BH-82). But the Board has also ruled that, where a transfer operates as a demotion, the refusal of that demotion might not constitute good cause in certain circumstances. The refusal of a demotion is not good cause or valid circumstances where such demotion was due to the detrimental conduct of the employee himself. If a claimant is unable to perform the duties of the higher position, Krach v. Wa Wa Market (816-BH-84), or if the employee has forced the employer to demote him through his own detrimental conduct, Dew v. Plumbers and Pipefitters National Pension Fund (969-BR-86), the refusal of the demotion does not constitute either good cause or valid circumstances.

In this case, the claimant's long record of negligent -- or, at least -- inept driving left the employer no reasonable choice but to transfer him. Considering the claimant's driving record, as well as his failure to file the reports of accidents on time, the employer's action in both suspending the claimant for one week and transferring him to a non-driving job was reasonable. Rather than accept this change, the claimant abandoned his employment. This is a voluntary quit within the meaning of Section 6(a) of the Law. Since the employer's actions in suspending and demoting the claimant were completely reasonable, the Board concludes that the claimant had neither good cause nor valid circumstances for his voluntary quit within the meaning of that Section of the Law.

DECISION

The claimant voluntarily quit his employment, without good cause or valid circumstances within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning February 18, 1990 and until he becomes reemployed, earns at least ten times his weekly benefit amount ($1,940.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Associate Member

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CLAIMANT

EMPLOYER

OUT-OF-STATE CLAIMS

Maryland
Department of Economic & Employment Development

William Donald Schaefer, Governor
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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 -

Date: Mailed: April 26, 1990

Claimant: Marcus L. Williams

Appeal No.: 9004618

S. S. No.:

Employer: Suggs Transportation Serv. Inc.

LO. No.: 50

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) 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 May 11, 1990

- A P P E A R A N C E S —

FOR THE CLAIMANT:

Marcus L. Williams - Claimant

FOR THE EMPLOYER:

Harold Suggs - President

FINDINGS OF FACT

The claimant was employed from February 21, 1989 as a driver at a pay rate of $8.25 per hour for full-time employment. On February 23, 1990, the claimant was discharged at the behest of the employer's insurance carrier, in that the claimant had had eight

accidents, six of which the insurance company were determined to be liable during his employment. The claimant, who performed his job duties including driving to the best of his ability and admits he may have been liable for the last accident of the eight. The claimant denies responsibility for the other seven accidents. The claimant was not offered employment in a different capacity at the time he was discharged as a driver.

CONCLUSIONS OF LAW

It is held that the claimant was discharged by decision of the employer but the reasons do not constitute gross misconduct or misconduct connected with the work, within the meaning and intent of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification will be imposed based on his separation from this employment. The determination of the Claims Examiner will be reversed.

DECISION

The claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. Benefits are allowed for the week beginning February 18, 1990 and thereafter, if he be otherwise eligible under the Law.

The determination of the Claims Examiner is hereby reversed.

P. J. Hackett amp
P. J. Hackett
Hearing Examiner

Date of Hearing:4/19/90
amp/Specialist ID: 50520
Cassette No.: 3163
Copies mailed on April 26, 1990 to:

Claimant
Employer
Out-of-State Claims (MABS)