DEPARTMENT OF EMPLOYMENT AND TRAINING

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

STATE OF MARYLAND
HARRY HUGHES
Governor

— DECISION —

Decision No.: 70-BR-86

Date: January 24, 1986

Claimant: Irene M. Ruby

Appeal No.: 8510716

S. S. No.:

Employer: Hearn & Kirkwood

L.O. No.: 2

Appellant: EMPLOYER

Issue: Whether the claimant failed to accept available, suitable work within the meaning of Section 6(d) 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON February 23, 1986

—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 and concludes that the claimant failed, without good cause, to accept suitable work offered to her, within the meaning of Section 6(d).

In concluding that the claimant had good cause to refuse the offer to return to her former job, the Hearing Examiner relied on several Board precedent cases. Those cases generally hold that disqualifying a claimant under Section 6(d) for the exact same conduct that she was previously disqualified for, under Section 6(a), 6(b) or 6(c), is contrary to the legislative intent of a maximum penalty' {10 weeks under Section 6(c) and 10x weekly benefit amount under Sections 6(a) and (b)}. Flowers v. TSI Infosystems, Inc., 224-BR-83. See also, Buchan v. Salisbury Employment Office, 708-BR-83.

The Board agrees with the Hearing Examiner that the reasoning of these cases is equally applicable to a case, such as this one, where the issue of Section 6(a) {or Sections 6(b) and 6(c)} was previously adjudicated in the claimant's favor. However, the claimant did not refuse to return to Hearn & Kirkwood for the exact same reasons that she quit. One of the primary reasons she quit because she had another job lined up. Although she was also clearly dissatisfied with certain 'working conditions at the time she quit, that still existed when she refused the offer, the job offer at Ace Hardware was an important, if not the chief factor in her original decision to quit. Obviously, this was not a factor in her decision to refuse the offer to go back Hearn & Kirkwood since she was separated from Ace Hardware. Therefore, the Board cases cited by the Hearing Examiner, while providing precedential value in deciding this case, are factually distinguishable in an important way.

The Board does find that since some of the same conditions that caused the claimant's resignation (most particularly the cold temperature necessary to the work) still existed, and since the claimant had only been out of work for approximately one month, and in claims status only two weeks at the time she refused the job, a maximum penalty under Section 6(d) is not warranted.

DECISION

The claimant failed, without good cause, to accept 'available, suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits from the week beginning August 11, 1985 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended

Benefits and Federal Supplemental Compensation (FSC), unless the claimant has been employed after the date of the disqualification.

Associate Member

Chairman

W:K
kbm
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CLAIMANT

EMPLOYER

Donna Gross - Room 413

UNEMPLOYMENT INSURANCE - GLEN BURNIE

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

— DECISION —

Date:

Claimant: Irene M . Ruby

Appeal No.: 10716

S. S. No.:

Employer: Hearn & Kirkwood

L.O. No.: 02

Appellant: Claimant

Issue: Whether the claimant failed to accept available, suitable work within the meaning of Section 6(d) of the Law.
Whether the claimant received benefits to which she was ineligible within the meaning of Section 17(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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON November 27, 1982

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Dorothy Ridenour-
Supervisor;
Bill Berwick-
Automatic Data
Processing

FINDINGS OF FACT'

The claimant filed for Maryland Unemployment Insurance benefits with her benefit year becoming effective August 4, 1985. She had previously worked for Hearn & Kirkwood, which is a food processing and preparing industry plant. The claimant, in July 1985, decided to quit her job with Hearn & Kirkwood to take what she

considered to be a better job. The hours at Hearn & Kirkwood varied and sometimes the claimant worked thirty and sometimes thirty-five and sometimes forty hours a week and she could never count-on a certain set amount of hours per week. She wanted to work full-time. She quit Hearn & Kirkwood because the hours were not full-time, and she wanted more than $4.25 an hour in pay. The third reason that she quit Hearn & Kirkwood was because it was too cold at the place of employment. In order to keep the fresh produce from deteriorating, temperatures have to be kept between 48 degrees and 55 degrees, plus the perishable food items handled at Hearn & Kirkwood would be less likely to deteriorate. The claimant was bothered about the cold temperature since the entire place of employment was refrigerated. She left for this reason as well. She got a better job with Ace Hardware, and evidently was not disqualified on her original separation from Hearn & Kirkwood because of better employment.

On August 13, 1985, the claimant was called by Betty Ridenour, her former supervisor and offered her old job back at the same rate of pay, the same duties, preparing food. The claimant refused the job for the same original reasons that she quit the job less than a month prior. Her reasons were, it was too cold in the area where she was working; the hours were not steady; not full-time and the money was only $4.25 an hour. She complained because she feels it is unfair to be offered her old job back that she had previously quit less than a month before and to be disqualified under Section 6(d) of the Law.

CONCLUSIONS OF LAW

The evidence is clear that the claimant was offerd a job which was suitable in all criteria, since the hours, rate of pay, type of job and so forth met all the criteria under Section 6(d) of the Law. The question is whether the claimant's position has merit or not,

The Board of Appeals has addressed some similar questions in analagous cases. For example, in the Flowers v. TSI Infosystems, Inc., 224-BR-83, the Board held that Section 6(d) penalty cannot sustained since the claimant was primarily not in claim status at the time of the alleged refusal, but further that the claimant cannot be disqualified under Section 6(d) with a ten times weekly benefit amount penalty in addition to a ten-week penalty under Section 6(c) of the Law. The Board found that this would be contrary to the legislative intent to impose a ten-week maximum penalty for any act of misconduct in separation from employment under Section 6(c) of the Law and coupled with a penalty under Section 6(d) for the same, exact actions or conduct.

Another similar case dealt with Section 6(a) of the Law. The claimant quit her job and received the maximum ten times weekly benefit amount penalty or disqualification under Section 6(a) of the Law for quitting. At the Appeals Hearing, the employer offered the same job back to the claimant and the Appeals Hearing Officer then imposed a ten times weekly benefit amount penalty under Section 6(d) of the Law. The Board of Appeals in the case of Reynolds v. Golden World Travel, 591-BR-83 held that disqualifying a claimant under Section(d) with an additional ten times penalty starting at a later date than the original ten times penalty under Section 6(a) for the exact same conduct, namely, refusal to perform her job, would be contrary to the legislative intent of the maximum penalty under Section 6(a), of the Law. See also Buchan v. Salisbury Employment Office, 708-BR-83.

It would appear that the Board of Appeals believes that for the same c o n d u c t claimant should not disqualified under dual Sections of the Law for the same time frame or approximate same time frame. While in the Flowers Case, supra, it is clear that the claimant was not in claim status and should never have been denied benefits under Section 6(d) anyhow; and in the Reynolds Case supra, you have the ten times penalty being addressed as the rationale, it is likewise by analogy clear that a claimant should not for the same conduct be double disqualified or investigated twice. It is recognized that there is sharp differences between the cases cited and the one under issue at the present time. In this case, obviously, the claimant was not penalized for quitting her Hearn & Kirkwood job initially, That was only because there evidently was good cause. However, the same analogy would hold true. She was investigated, obviously, for leaving Hearn & Kirkwood and she could have been disqualified under Section 6(a),(b), or (c) of the Law. She did not meet the criteria for disqualification and, therefore, surmounted a disqualification. However, the same conduct is true in the instant case. Nothing had changed in the less-than- month interval. In effect, she was being offered the same job back that she just quit earlier. While the job meets all the suitable criteria, it defies common sense criteria. The claimant had quit her employment for the same reason she didn't want her job back. This is the only rational understanding of the situation. To then disqualify her because she didn't accept so called "available, suitable work," is to circumvent the real intent of the unemployment Law and to seek methods under which a claimant can be cleverly disqualified. She obviously quit her job for three

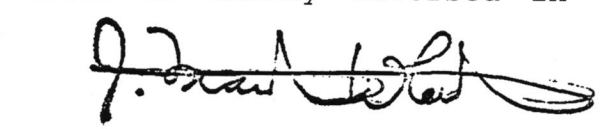
reasons, and the same three reasons several weeks later existed and that's the reason she did not want to go back. To offer her the same job that she quit would not be considered by any terms, appropriate.

If one does not like or is not wedded to the logic used aforementioned, it is clear for the reasons already cited that the claimant's job opportunity was not appropriate and not suitable. It meets the criteria of the Law, but it does not meet common sense criteria. Thus, the claimant was offered work which for her was not suitable since she had just quit it. If one follows the rationale of the local office in disqualifying the claimant, then every time one person quits a job, there is an opening and they should be offering the same job back again so that they wind up being disqualified under Section 6(d) of the Law is no other appropriate Section can be found. This defies logic and sensibility.

DECISION

The claimant failed, but with good cause, to accept available, suitable work when offered within the meaning of Section 6(d) of the Law. There is no denial of benefits.

The determination of the Claims Examiner is hereby reversed in favor of the claimant.



HEARINGS EXAMINER

Date of hearing: 10/31/85

Cassette: 6998

hf (Reimer)

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Claimant
Employer
Unemployment Insurance-Glen Burnie

Donna Gross - Room 413