



**DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032
- DECISION -

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 71-BH-82

DATE: Jan. 20, 1982

APPEAL NO.: 07771

S. S. NO.:

CLAIMANT: Carolyn Ann Bunjon

EMPLOYER: Church Hospital

L. O. NO.: 27

APPELLANT: REOPENED CASE
CLAIMANT APPEAL

ISSUE Whether the Claimant was able to work, available for work and actively seeking work within the meaning of Section 4(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 MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR 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

February 19, 1982

- APPEARANCES -

FOR THE CLAIMANT:

Carole A. Bunjon - Claimant
Kathleen Pontone - Atty. At Law

FOR THE EMPLOYER:

Lisa Olson-
Reed, Roberts
Christine Roberts-
Employee Relations
Coordinator

EVIDENCE CONSIDERED

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 into this case, as well as Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was first employed as a nurse by Church Home and Hospital in October of 1967. Her last position with this Employer was as a nurse practitioner. She was laid off on March 11, 1980 due to a lack of work.

The Claimant, who had recently been married, began to experience financial problems. She and her husband owned two homes, one in Baltimore and one in Ocean City, Maryland. Together they decided to move to the house in Ocean City on account of the substantially lower mortgage payments. The Claimant moved to the house on the Eastern Shore on June 10, 1980. The Claimant applied for unemployment benefits effective July 27, 1980.

After her move to the Eastern Shore, the Claimant sought work solely as a nurse practitioner for an extended period of time, stretching for at least twenty-six weeks past July 27, 1980. The Claimant accepted a job in January of 1981 which carried the title of nurse practitioner, but which turned out really to be a job as an alcoholism counselor. The Claimant resigned that position in July of 1981 and took a position at Peninsula General Hospital as a nurse. There are some prospects that this job may develop into a job as a nurse practitioner.

A nurse practitioner is a job with more professional responsibilities than that of a registered nurse. The Claimant took an additional year of courses in order to become eligible for the position of nurse practitioner. A nurse practitioner takes patient histories and physicals, writes orders for tests, drugs and other therapeutic procedures, make the rounds of patients, assesses the patients and writes orders. All these duties are beyond the responsibilities of registered nurses. A registered nurse is paid at a pay rate of between \$7.42 and \$8.73 an hour, while a non-certified nurse practitioner is paid at a rate of \$9.09 to \$10.74 an hour.

There are thirteen hospitals in the Baltimore area which employ one or more nurse practitioners. There is no evidence that there were any job openings in any of these locations for the position of nurse practitioner at the time the Claimant was unemployed or moved. There were little or no job opportunities as a nurse practitioner on the Eastern Shore of Maryland during the time the Claimant was seeking work, but the Claimant discovered this only after diligent applications for this type of employment. The Claimant, in addition to applying for available nurse practitioner positions, attempted to create such positions by interviewing with various doctors and hospitals. The Claimant did not refuse any offers of work during the period her claims were filed, except for an offer of a part-time nursing job which consisted of two nights of work a week. The Claimant listed, when she applied for unemployment insurance benefits, the dates and times on which she would prefer to work, but she never refused to work any particular days of the week or any shift.

CONCLUSIONS OF LAW

Regarding the issue of whether the Employer had good cause for failing to file a timely appeal to the Referee under Section 7(c)(ii) of the Law, the Board has been presented no evidence which convinces it to change its previous position that the Employer did have good cause for failing to file the appeal timely. Therefore, the Board will once again hold that there was good cause for the Employer's late appeal to the Appeals Referee.

Regarding the 4(c) issue, the Board has available to it more complete evidence and will modify its previous decision. The Board concludes that, in the circumstances of this case, the Claimant should not be disqualified for relocating to a different area. The Claimant had good economic reasons for her move; she was unemployed and obviously trying to live in as economical a manner as possible. There is nothing in the unemployment law which disqualifies a person for moving to different locale. In fact, elaborate administrative machinery has been set up in order to process the claims of persons who move from state to state while unemployed. Absent evidence that a person has moved to an area with less prospects for employment for a frivolous reason or in order to actually avoid finding employment, the mere making of such a move is not grounds for a 4(c) disqualification.

The Board does conclude, however, that once a person has moved to a new area, that person must adjust his or her job search to suit the area to which he or she has moved. Section 4(c) required that the extent of the job seeking "effort required shall depend upon the labor market conditions in the Claimant's area."

In this regard, the Board concludes that the Claimant, once she had moved from an area (Baltimore) with thirteen possible employers of nurse practitioners to a new area, and once she had become sufficiently familiar with the labor market to realize that there were virtually no employers in her new area willing to hire nurse practitioners, could reasonably be required to adjust her job expectations downward and apply for positions as a registered nurse. This is, in fact, what happened. The Claimant did accept a job as a registered nurse, but not until her unemployment benefits had expired.

The Board, faced with a difficult task of determining exactly when the Claimant should have lowered her job expectations, has considered the following factors. The profession as a nurse practitioner is different from, requires more education than, entails more responsibility than, and pays better than the profession of registered nurse. The difference between the two professions, however, is not so great so as to justify an absolute refusal to return to the profession of registered nurse. The profession of nurse practitioner is practically non-existent in the Ocean City area. It did take the Claimant some time to ascertain this fact. In addition, the Claimant is

entitled to some time to attempt to develop the market in her area for her professional skills. The most likely way for the Claimant to eventually obtain a position as a nurse practitioner in her area was to accept a position as a registered nurse and attempt to change, eventually, her responsibilities, title and pay to those of a nurse practitioner after being hired.

Considering all these factors together, the Board concludes that a period of thirteen weeks would give the Claimant a reasonable opportunity to find the type of work that she preferred and that, in the circumstances of this case, it was unreasonable of her after that period of time to insist on the particular type of job she wanted when other jobs which were somewhat similar in nature were available. Therefore, the Claimant will be held to be disqualified under Section 4(c) beginning thirteen weeks after her first claim was filed.

DECISION

The Employer file an untimely appeal to the decision of the Appeals Referee, but for good cause, within the meaning of Section 7(e) of the Maryland Unemployment Insurance Law.

The Claimant was able, available and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law for the week beginning July 27, 1980 up to and including the week beginning October 19, 1980.

The Claimant was not able, available and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law for the week beginning October 26, 1980 until January 24, 1981.

The decision of the Appeals Referee is modified.



Chairman



Associate Member

K:W
zvs
(Ayers)

DATE OF HEARING: October 15, 1981.



**DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT
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Appeals Counsel

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DECISION NO.: 457-BH-81

DATE: April 24, 1981

APPEAL NO.: 07771

S. S. NO.:

CLAIMANT: Carole Ann Bunjon

EMPLOYER: Church Hospital

L. O. NO.: 27

APPELLANT: EMPLOYER

ISSUE Whether the Claimant was able to work and available for work within the meaning of Section 4(c) of the Law; and whether the Employer's failure to file a timely and valid appeal was for good cause within the meaning of Section 7(c)(ii) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

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THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

May 24, 1981

- APPEARANCES -

FOR THE CLAIMANT:

Claimant Not Present

FOR THE EMPLOYER:

David Lautenberger-
Reed, Roberts
Assoc., Inc.
Christine Roberts-
Employee Relations
Coordinator

FINDINGS OF FACT

The Claimant, a Registered Nurse and certified Nurse Practitioner, was employed by Church Hospital in October of 1967. Her position with this Employer was as a Nurse Practitioner at the

time she was laid off by the Employer because her position as Nurse Practitioner had been abolished. The Claimant's last day of work with Church Hospital was March 11, 1980.

Since the Claimant was laid off due to a lack of work, she applied for and began receiving unemployment benefits. Her Local Office called her in for an eligibility review and as a result of this interview, on September 18, 1980, she was disqualified from receiving unemployment benefits from September 7, 1980, and until she was able, available and actively seeking work without restrictions. The Claimant was later found eligible for benefits, as she was complying with the requirements of Section 4(c) and her benefit eligibility was reinstated.

The Employer did not receive copies of the 221 concerning the Claimant's ineligibility and later her eligibility within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law because it was not made a party to the case. When the Employer was able to determine through invoices reimbursable to the Employment Security Administration that the Claimant was receiving benefits, they filed an appeal from the finding of eligibility within the meaning of Section 4(c) of the Law.

The Claimant, prior to her leaving her employment with Church Hospital, was offered a job as Registered Nurse at a slightly lower salary than she was receiving as a Nursing Practitioner. There is no dispute that her responsibilities and position in the hospital would have been reduced. The Claimant refused the job as Registered Nurse and subsequently moved to Ocean City, Maryland.

There are two hospitals in the area to which the Claimant moved her residence.

COMMENTS

Although the Employer did not file a timely appeal to the Board of Appeals from the decision of the Appeals Referee, dated November 14, 1980, the Employer's reason for not filing a timely appeal was for good cause within the meaning of Section 7(e) of the Maryland Unemployment Insurance Law.

The Employer did not file a timely appeal from the decision of the Appeals Referee because the Employer was not made a party to the interview before a Claims Examiner, nor the hearing before the Appeals Referee and, therefore, did not receive a determination from the Claims Examiner or a decision from the Appeals Referee. Since the Employer did not receive proper notice, it cannot be estopped for appealing, due to the provisions, as set forth in Section 7(e) of the Law.

After the Claimant refused the job as a Registered Nurse, she began seeking work in her specialized field and at the salary she expected as a Nurse Practitioner.

The Board, in making its decision, has noted several factors which have a great bearing on this case. First, the Board takes judicial notice of the crying need for registered nurses in the Baltimore area, as well as throughout Maryland, generally. Yet, the Claimant chose to remove herself from an area where there was enormous job opportunities and move to an area where positions for nurses are much less and for nurse practitioners, scarce. The Board also notes that on the eligibility review form signed by the Claimant, she stated that she would not work Saturdays or Sundays.

After reviewing the evidence in this case, testimony and oral argument, the Board concludes that the Claimant placed unreasonable restrictions on her salary, days and hours of work and also restricted her opportunity for employment by moving into an area where job openings, at least in her field of endeavor, were scarce. Under the circumstances, the Claimant does not satisfy the requirements, as set forth within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law, and will be disqualified from receiving unemployment benefits.

DECISION

The Employer's failure to file a timely appeal was for good cause within the meaning of Section 7(e) of the Maryland Unemployment Insurance Law.

The Claimant was not able, available and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefit from July 27, 1980 until January 24, 1981.

The decision of the Appeals Referee is reversed.


Chairman


Associate Member

K:W
zvs
(I. Ayers)

DATE OF HEARING: April 9, 1981.

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - SNOW HILL