

 **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

— D E C I S I O N —

Decision No.: 734-BH-89
Date: August 31, 1989
Appeal No.: 8903477
S. S. No.:

Claimant: Pete R. Smith

Employer: P & J Contracting Co., Inc.
c/o Pless B. Jones, Owner

L.O. No.: 1
Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct or misconduct, connected with his 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 RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

September 30, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant not present

FOR THE EMPLOYER:

Bernard Gaines,
Manager

EVALUATION OF 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 Economic and Employment Development's documents in the appeal file.

FINDINGS OF FACT

The claimant was a laborer working for the employer, a contractor. He worked from July 18, 1988 through January 26, 1989. The claimant first worked for a foreman named Mike Lemon. Mr. Lemon reported that the claimant would not follow orders, would show up for work apparently under the influence of alcohol, and was creating problems with co-workers. The claimant was removed from Mr. Lemon's crew and transferred to a crew run by a Reverend Burgess. Rev. Burgess reported that the claimant was disruptive and would not follow orders. The claimant was given a third opportunity to work under a third foreman named Norwood Williams. After reporting to the job site for Mr. Williams, the claimant told the foreman that he was going downstairs to pick something up. He never returned. The company later processed this as a discharge for walking off the job site, but the claimant never actually attempted to return.

CONCLUSIONS OF LAW

The Board concludes that the claimant voluntarily quit his job when he walked off the job site and never returned. The Board did not find credible the claimant's testimony that two foremen were harassing him irrationally, and this testimony became even less credible when it was learned that there were actually three foremen who found the claimant so insubordinate and disruptive that he could not work with them. For this reason, the Board did not credit the claimant's testimony that he was sent off the job at his last work site. It seems extremely unlikely that three foremen in a row would harass the claimant, and the Board has thus given credibility to the employer's testimony that the claimant was a disruptive individual and was for that reason being transferred to different foremen and job sites.

Since the claimant voluntarily left, the burden is on him to show that he had good cause or valid circumstances for so doing. The claimant has not met the burden in this case. Since the Board disbelieves the claimant's testimony that he was told to leave his third job site, it appears that he left



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21201

(301) 333-5040

— DECISION —

Date: Mailed: April 20, 1989

Claimant: Pete R. Smith

Decision No.: 8903477

S. S. No.:

Employer: P & J Contracting

L.O. No.: 1

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.
Whether the claimant filed a timely appeal or had good cause for an appeal filed late within the meaning of Section 7(c)(3) 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 EUTAW STREET, BALTIMORE, MARYLAND, 021201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON May 5, 1989

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Pete R. Smith - Claimant

Not Represented

FINDINGS OF FACT

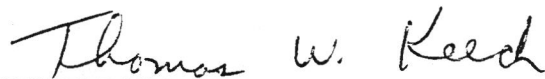
The claimant was a cement finisher for the employer, P & J Contracting. He was on good terms with his employer and had been a satisfactory employee. On or about January 26, 1989, the claimant was at a job site on Front Street. Some struts had come out of form and had to be hammered back in. When this was first noticed, the claimant's supervisor, Mr. Burgess, was not at the job site. When he later appeared, the claimant asked Mr. Burgess for a hammer which was needed to replace the struts. Mr. Burgess, who appeared to be preoccupied and distracted by some other matter, did not provide the equipment and instead verbally

for those same psychological reasons that caused him to be unable to get along with the two previous foremen. There is no showing that there was anything unusual about the conditions of employment or anything unreasonable in the actions of the foremen. For this reason, the claimant has not met his burden and a finding must be made that the claimant had neither good cause nor valid circumstances to leave his employment.

DECISION

The claimant voluntarily left his job, without good cause and without 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 January 22, 1989 and until he becomes re-employed, earns at least ten times his weekly benefit amount, and thereafter becomes unemployed through no fault of his own.

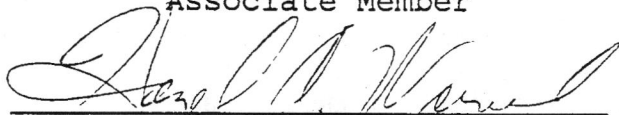
The decision of the Hearing Examiner is reversed.



Chairman



Associate Member



Associate Member

K:W:W

kbm

Date of Hearing: June 27, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

rebuked and chastised the claimant. The claimant was told to leave the job site and report to another one. When he arrived at the other job site. he was told he had been fired. Communication between the different job sites was accomplished through a walkie-talkie or other shortwave radio system.

No evidence was presented that the claimant deliberately disregarded the employer's rules of conduct or performed poorly on the job, or of insubordination by the claimant.

A benefit determination mailed to the parties provided that the last day to file a timely appeal was March 21, 1989. In this case, the appeal was filed in the Local Office on March 22, 1989.

The appellant offers as a reason for the late appeal that he was out of town due to his mother's death and did not see the benefit determination in his mail until he returned from South Carolina.

CONCLUSIONS OF LAW

In Premick v. Roper Eastern, (141-BR-83), the Board of Appeals conferred upon the Appeals Division its own jurisdiction granted pursuant to Article 95A, Section 7(c)(3) to rule upon the issue of timeliness of appeal as well as the issue of good cause in the filing of a late appeal. In the instant case, the evidence will support a conclusion that the appellant filed a late appeal for reasons which are good cause under the provisions of Article 95A, Section 7(c)(3) and legal precedent construing that action.

Article 95A, Section 6(c) provides for disqualification from benefits where a claimant is discharged for actions which constitute a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty or a course of wrongful conduct committed within the scope of the employment relationship, during hours of employment, or on the employer's premises. The preponderance of the credible evidence in the instant case will support a conclusion that the claimant's actions do not rise to the level of misconduct within the meaning of the Statute.

DECISION

Good cause was shown to excuse the late appeal under Section 7(c)(3) of the Law.

The claimant was discharged for reasons that do not rise to the level of misconduct within the meaning of Section 6(c) of the Statute.

The decision of the Claims Examiner is reversed.


Joanne M. Finegan
Hearing Examiner

Date of hearing: 4/14/89
amp/Specialist ID: 01062
Cassette No. 3285

Copies mailed on April 20, 1989 to:

Claimant
Employer
Unemployment insurance - Baltimore (MABS)