



DEPARTMENT OF EMPLOYMENT AND TRAINING

**BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
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HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

STATE OF MARYLAND

HARRY HUGHES
Governor

— DECISION —

Decision No.: 789-BH-84

Date: September 28, 1984

Appeal No.: 233102

S. S. No.:

Claimant: James E. Estes

Employer: Fred & Harry's Restaurant

L.O. No.: 43

Appellant: REMAND FROM
COURT

Issue: Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of §6(a) of the law; and whether the claimant was discharged for gross misconduct or misconduct, connected with the work, within the meaning of §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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

October 28, 1984

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

James E. Estes - Claimant
Stephanie Klein, Esquire - Legal Aid

William Hewitt, Jr.
Attorney

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 in this case, as well as Department of Employment & Training's documents in the appeal file.

FINDINGS OF FACT

The claimant is a God-fearing man. He is a member of the Church of the Holy Redeemer, a Holiness Church of the Apostolic Faith. He has been baptized in the name of Jesus; he is a minister of God, although he does not have a license to preach the gospel. Indeed, his wife is the pastor and overseer of his church. His religion forbids working on Sunday.

The claimant was employed by Fred & Harry's Restaurant of Silver Spring, Maryland on July 3, 1961. He worked as a cook earning \$3.36 per hour at the time of his separation from employment on March 1, 1978. In violation of his faith, the claimant worked on Sunday for this employer for nine years. He attended church services on Sunday, nevertheless, but he had to leave to go to work before services ended.

Over the years, the claimant became increasingly conscious that he was living in sin by violating the prohibition against Sunday work. However, he sheepishly continued to work on Sunday with growing reluctance. Finally, one Sunday, while in church, the claimant vowed to never again work on Sunday. He informed the pastor of the church, (his wife), of his resolution. The claimant has not worked on Sunday since, even in subsequent employment.

The claimant became even more firm in his commitment to his resolution when, according to his faith, he received three "signs" that God had not been pleased with his Sunday work. On the same Sunday of his resolution, suddenly, and without warning, God either caused or allowed a motor vehicle to nearly run him down, and then to crash, with great force and violence. On the next day, while the claimant was at home asleep, a portable baseboard heater caught afire about six inches from the claimant, and the flames nearly "burned him up." On the following day, the claimant was "almost burned up" again while at work where there was an explosion in a boiler causing flames which scorched his arm and face.

The claimant reported that he could no longer work on Sunday to Buddy, his supervisor, who responded "I guess you're going to find another job." Later, Fred, another supervisor, told the claimant "I heard you gave two weeks' notice." The claimant denied that he had given notice of resignation, but told Fred that he could no longer work on Sunday. Fred informed the claimant that when Buddy "got back" they would all discuss the matter. However, no meeting ever took place. The claimant did not want to quit his job and believed that the employer would have permitted him to work on a day other than Sunday. Shortly thereafter, the claimant was separated from employment.

The Appeals Referee held that the claimant left work without good cause but with valid circumstances and allowed unemployment compensation after a nine-week disqualification.

On appeal, the Board of Appeals reversed, ruling that "superstition" does not constitute valid circumstances and imposed the maximum disqualification. The Circuit Court for Montgomery County, Maryland, by Order dated November 28, 1983, remanded the case to the Board of Appeals. The previous decision of the Board of Appeals is reversed.

CONCLUSIONS OF LAW

In Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790 (1963) a claimant for unemployment compensation, who was a member of the Seventh-Day Adventist Church, had been denied benefits after she had been discharged by her employer because she would not work on Saturday, the Sabbath Day of her faith. The Supreme Court of the United States held that a state could not constitutionally apply the eligibility provisions of its unemployment compensation statute so as to deny benefits to a claimant who had refused employment because it violated her religious belief prohibiting working on Saturday. To do otherwise, the Court held would be in violation of the guarantee of free exercise of religion of the First Amendment to the United States Constitution made applicable to the states by the Fourteenth Amendment.

In Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981) the Supreme Court held that Indiana's denial of unemployment compensation to a claimant who terminated his job because his religious beliefs forbade participation in the production of armaments, violated the claimant's First Amendment right to free exercise of religion. At 450 U.S. 714, the Court also stated:

The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.

In accord, see Dotter v. Main Employment Security Commission, 435 A2d 1368 (1981), where the Supreme Judicial Court of Maine held that an employee who resigned his job after his employer informed him that if he attended a religious festival he would face possible discharge, had a constitutionally protected interest of free exercise of religion which the Commission could not violate by even temporarily disqualifying him for unemployment compensation.

For these reasons, the Board is of the opinion that this claimant was discharged because he could not work on Sunday, for religious reasons, as required by his employer. Unemployment compensation must be awarded.

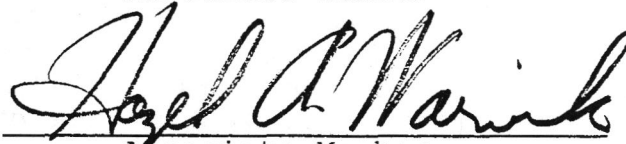
DECISION

The claimant was discharged because his religious belief forbade working on Sunday. Benefits are allowed based upon the Free Exercise Clause of the First Amendment to the United States Constitution, the Fourteenth Amendment, and the Maryland Constitution, notwithstanding anything to the contrary in Maryland's Unemployment Insurance statute. The claimant is entitled to benefits from the week beginning February 28, 1978.

The prior decision of the Board of Appeals is reversed.



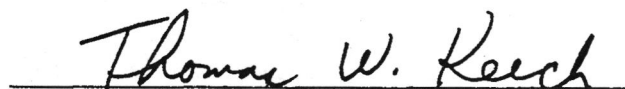
Associate Member



Associate Member

CONCURRING OPINION

Because the claimant has now demonstrated that his leaving of his employment was necessitated by his sincere religious belief, I agree that the Thomas case precludes the denial of benefits in this case.



Chairman

D:W:K

kmb

DATE OF HEARING: July 10, 1984

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Stephanie Klein, Esquire
Legal Aid Bureau

William E. Hewitt, Jr.
Attorney at Law



EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

383-5032
- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

DECISION NO.: 399-BR-82

DATE: April 6, 1982

APPEAL NO.: 233102

S.S. NO.:

CLAIMANT: James E. Estes

EMPLOYER: Fred & Harry's Restaurant

L.O. NO.: 43

APPELLANT: CLAIMANT

ISSUE Whether the Claimant's unemployment was due to leaving work voluntarily, without good cause; within the meaning of Section 6(a) 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

May 6, 1982

-APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

After having reviewed the record in this case, the Board of Appeals agrees with the facts found by the Appeals Referee; however, it disagrees with the reasoning contained in the decision of Appeals Referee. Under the circumstances, the disqualification imposed will be modified.

Superstition does not constitute serious, valid circumstances within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

DECISION

The unemployment of the Claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law. He is disqualified from receiving benefits from the week beginning February 28, 1978 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$890.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Appeals Referee is modified to this extent.


Chairman


Associate Member

K:W
raf

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON



DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
383 - 5040

BOARD OF APPEALS

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SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND
HARRY HUGHES
Governor
KALMAN R. HETTMAN
Secretary

R E M A N D E D
- DECISION -

GARY SMITH
Chief Hearings Officer

CLAIMANT: James E. Estes

DATE: Feb. 23, 1982

APPEAL NO.: 233102

S.S. NO.:

EMPLOYER: Fred & Harry's Restaurant

L.O. NO.: 43

APPELLANT: Claimant

ISSUE: Whether the claimant's unemployment was due to leaving work voluntarily without good cause, within the meaning of Section 6(a) of the Law. Whether the claimant was able, available and actively seeking work within the meaning of Section 4(c) of the Law.

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON

March 10, 1982

-APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

James E. Estes - Claimant

Represented by
Kyle Zimmer,
Manager

FINDINGS OF FACT

The claimant's weekly benefit amount is \$89.00. The claimant was employed by Fred & Harry's Restaurant of Silver Spring, Maryland on July 3, 1961. He was performing duties as a cook at \$3.36 per hour at the time of his separation on March 1, 1978.

The testimony reveals that the claimant worked six days per week as a cook. This included Sunday, which he worked for 15 years. On a Tuesday, the claimant told his manager that he would not be able to work anymore on Sunday. The manager asked what his intentions were and he told the manager he would have to quit and find another job, since he would not work on Sundays. Neither the claimant nor the manager ever discussed the possibility of working on another day other than Sunday. The claimant had worked Sunday for 15 years.

The claimant indicated that he is a church man and even though he worked 15 years on Sunday, he had three accidents in a row which indicated to him that the Lord no longer wanted him to work on Sundays. His off day was Monday, but it was never discussed whether he could work Monday instead of Sunday. As a result, the claimant quit his employment.

Since the claimant left Fred & Harry's Restaurant, he has worked at the Roma Restaurant as a cook from July of 1978 for approximately two weeks. He then became employed with the Sheridan Motor Inn from July of 1978 to April of 1979 as a cook. He remained unemployed from April, 1979 until July 27, 1979, at which time he became employed as a cook with Baker Brown at \$225.00 per week. He remains in this job at the present time. During none of his last three employments has he worked on Sunday.

COMMENTS

It is concluded from the testimony that the claimant voluntarily left his employment not out of religious beliefs, but out of superstition. The claimant worked 15 years on Sunday and his religious doctrine does not bar him from working on Sundays. However, when he had three accidents in a row, he felt that he should no longer work on Sunday and, therefore, left his employment. The claimant's reasons for leaving, therefore, were personal in nature and not attributable to the employer.

There are valid circumstances in this case, however, which would warrant the imposition of less than the maximum disqualification imposed by Law. The determination of the Claims Examiner, under Section 6(a) of the Law, will be modified accordingly.

It is further concluded that the mere fact that the claimant does not want to work on Sunday is not disqualifying in view of the number of employment opportunities where Sunday work is not required. The determination of the Claims Examiner, under Section 4(c) of the Law, is reversed.

DECISION

The claimant is able, available and actively seeking full-time work within the meaning of Section 4(c) of the Law. The determination of the Claims Examiner, under Section 4(c) of the Law, is reversed.

The claimant voluntarily left his employment, without good cause, within the meaning of Section 6(a) of the Law. He is disqualified from receiving benefits for the week beginning February 28, 1978 and nine weeks immediately following. The determination of the Claims Examiner, under Section 6(a) of the Law, is modified to this extent.



William R. Merriman
Appeals Referee

Date of hearing: 2/16/82
cp/?
(220-82)

Copies mailed to:

Claimant
Employer
Unemployment Insurance - Wheaton
Board of Appeals