

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

Decision No.: 821-BH-87
Date: Nov. 20, 1987
Appeal No.: 8704601
S. S. No.:
L.O. No.: 7
Appellant: CLAIMANT

Claimant: Lynn Bailey

Employee: Tom Curro Lincoln
Mercury, Inc.
ATTN: Chris Connolly
General Sales Mgr.

Issue:

Whether the claimant was discharged for gross misconduct or misconduct, connected with her 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 MAY BE 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.

December 20, 1987

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Lynn Bailey, Claimant
George Simmons, Witness
Stephane Jasmin, Law Student
Karen Baker, Supvr. Atty.
Sandra Sands, Supvr. Atty.

FOR THE EMPLOYER:

Chris Connolly,
General Sales
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.

The Board has given little weight to the claimant's complaint before the Human Relations Commission (Exhibit B-1). Since the claimant was present and testified in person concerning her allegations of sexual harassment, the written statement of her allegations before the Human Relations Commission add nothing to the case other than to show that her actions in filing the complaint were consistent with her testimony. The Board has given a small degree of weight to the affidavits (Exhibts B-2 and B-3) submitted by the claimant, and they do tend to corroborate her testimony to some extent. The Board's findings primarily, however, rest upon the claimant's own extensive and credible testimony before both the Board and the Hearing Examiner. The claimant's testimony varied only slightly from that of the employer's representative; the variation was with respect to the timing of the claimant's reprimand and her last occurrence of lateness. In other respects, the claimant's testimony was quite similar to that of the employer's representative. The claimant's extensive and detailed testimony with respect to harassment, however, was not credibly contradicted by any witness for the employer. Indeed, the employer presented only one witness in the course of both hearings, and the witness did not directly refute the detailed testimony of the claimant.

FINDINGS OF FACT

The claimant was employed from September of 1986 until January 17, 1987 for the employer. During this period, she was fired on December 6, 1986 and rehired on December 8, 1986.

The claimant was given a demonstrator car to use. In violation of the written agreement she had signed with respect to the demonstrator, the claimant allowed another person to drive the car on an occasion when she was too ill to drive it herself. The policy which the claimant violated was not at that time strictly enforced, and the claimant's violation of it in these circumstances was more a violation of the letter rather than the spirit of the policy. The other driver got into an accident, causing \$1,200 worth of damage. The claimant offered to fix the car for free, but the employer was satisfied that the claimant pay the \$300 insurance deductible amount. The claimant was then allowed to continue using a demonstrator.

The claimant was late a number of times during her employment. Three occasions, which occurred during the weekdays, were excused for personal reasons. Not excused, however, were three occasions during which the claimant was late for Saturday morning sales meetings. The claimant was substantially late for three sales meetings in a row. After the second meeting, she was warned that an additional instance of lateness would result in her termination. She was late for an additional meeting and was terminated on December 6, 1986.

TWO days later, however, the claimant was rehired. She was not late after this incident.

The Claimants supervisor was pursuing her sexually. She worked alone in an office with him much of the time, and he continuously asked her for dates. As time wore on, the conduct became more crude, and he continually requested sexual favors from her and touched her in an offensive way. When the claimant complained about this to higher management, higher management suggested that she comply with her supervisor's wishes and sleep with him. In the beginning of December, her supervisor followed her home and physically accosted her in her apartment. After he was rejected, her supervisor ceased making advances to the claimant and began being very uncooperative and hostile towards her at work. This continued for approximately a month, until the claimant was fired. When the claimant was fired, she was explicitly told by higher management that her failure to compromise her ideals with her immediate supervisor had resulted in a situation which would be resolved by having her discharged.

The claimant was extremely reluctant to attend the Saturday morning staff meetings because she was the only female person present and because the meetings were peppered with sexually explicit comments, pornographic movie clips and obscene, graphic demonstrations.

CONCLUSIONS OF LAW

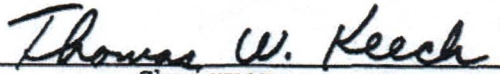
The Board concludes that the claimant was discharged, but not for any misconduct within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. The claimant's refusal to engage in sexual play with her supervisor is certainly not misconduct of any sort. Although the claimant did violate the employer's rule to some extent by allowing another person to drive her demonstrator, this was neither a serious and substantial deviation from company policy nor was it the actual reason that she was fired. The claimant was given another demonstrator soon afterward and was employed for

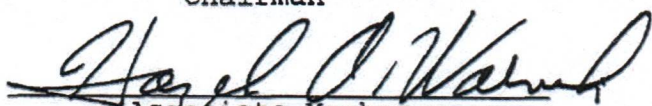
some months subsequent to this incident. The claimant's failure to attend sales meetings could be considered to be gross misconduct, as it was repetitive and occurred after warnings, except for two things: first, the conduct did not continue after the claimant was rehired on December 8th; second, the claimant's conduct was utterly understandable in the light of the conduct of the other parties in the staff meetings. Although the claimant does appear to be of an extremely sensitive nature, no employee should have to put up with the type of crude, harassing and pornographic behavior which occurred at the staff meetings.

The Board concludes that the claimant was not fired for either of the reasons propounded by the employer. She was fired for her refusal to sexually submit to her immediate supervisor, and this is certainly not misconduct within the meaning of the unemployment insurance law.

DECISION

The claimant was discharged, but not for misconduct, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her separation from Tom Curro Lincoln Mercury. The claimant may contact her local office concerning the other eligibility requirements of the law.


Chairman


Associate Member

K:W

kbm

Date of Hearing: November 3, 1987

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE -
COLLEGE PARK

EMPLOYER

Georgetown University Law Center
Sex Discrimination Clinic
ATTN: Karen Baker
Sandra Sands



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

William Donald Schaefer

BOARD OF APPEALS

THOMAS W. KEEC - Chairman
HAZEL A. WERNICK - Associate Member
SEVERN E. LANIER - Appeals Counselor
MARK R. WOLF - Chair Hearing Examiner

DECISION

Claimant: Lynn M. Bailey
Date: Mailed: 6/12/87
Appeal No.: 8704601-EP
S. S. No.:
Employer: Tom Curro Lincoln Mercury, Inc.
LO. No.: 7
N. Appellant: Employer

Issue:

Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 6/29/87

APPEARANCES

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present

Chris Connolly,
General Sales
Manager

FINDINGS OF FACT

The claimant was employed by Tom Curro Lincoln Mercury, Inc. for approximately three months until January 17, 1987. He was a Test Market Manager earning \$200 weekly.

The claimant signed a demonstrator agreement when she was given a company vehicle that the demonstrator must not be driven by the members of the employee's family other than himself.

The claimant let a friend of hers drive the company's vehicle and

there was an accident. Repairs for the vehicle cost \$1200 and