Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

—DECISION—

Decision No.: 828-BR-88

Date: Sept. 12, 1988

Claimant: Gilbert LaDana

Appeal No.: 8806943

S. S. No.:

Employer: MEBA Training Program

L. O. No.: 40

Appellant: CLAIMANT

Issue:

Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law; 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 MAY BE 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON October 12, 1988

—APPEARANCES—

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. The Board of Appeals, however, concludes that these facts do not sustain the Hearing Examiner's conclusions of law.

The Hearing Examiner concluded that the claimant's statement "Well, I've given this some thought, and I think you should lay me off instead of Pehaim," is a statement of resignation. The Board does not find in this statement, that the claimant expressed the requisite intent to separate from his employment, as required under Section 6(a) of the Maryland Unemployment Insurance Law. In fact, the claimant's very next statement was, "Lucille, I didn't say that I resigned."

The statement was merely an offer by the claimant, to the employer, to be laid off in place of another employee. An offer to accept a layoff cannot be changed into a resignation without some additional expression of a desire and intent to resign on the part of the employee.

DECISION

The claimant was discharged from his employment, but not for any misconduct as defined in Section 6(b) or (c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the claimant's separation from employment with MEBA Training Program. The claimant may contact his local office concerning the other eligibility requirements of the law.

The decision of the Hearing Examiner is reversed.

Donna P. Watts
Associate Member

Thomas W. Keech
Chairman

DW:K
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Lincoln Weed, Esq.
Dickstein, Shapiro & Moran

UNEMPLOYMENT INSURANCE - EASTPOINT

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

— DECISION —

Date: Mailed: July 25, 1988

Claimant: Gilbert Ladana

Appeal No.: 8806943-EP

S.S. No.:

Employer: MEBA Training Program

L.O. No.: 40

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work within the meaning of Section 6(c) 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON August 9, 1988
NOTICE. APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- APPEARANCES -

FOR THE CLAIMANT:

Gilbert Ladana - Claimant

FOR THE EMPLOYER:

Lucille Hart - Administrator;
Lincoln Weed, Legal Counsel

FINDINGS OF FACT

The claimant began employment on August 15, 1968, and at the time of separation, he held the position of Academic Dean a seamanship-technical institution operated on the Eastern Shore of Maryland and known as the Calhoun School of the Marine Engineers Benefit Association (MEBA). He last performed active services on May 2, 1988, although he was paid through June 17, 1988.

In prior years, the school described above was a flourishing institution with many students, but in more recent times, has been in a state of decline approximately paralleling that of the U.S. Merchant Marine. Winding down the school had reached a point where there were three instructors, plus the claimant, and it was the expressed intention of the employer to separate a particular instructor, name Guy Pehaim, and it was the claimant's duty to effect this separation. At that point, it was the employer's plan to stablize the remaining training organization at three instructor, including the claimant, who would also perform some administrative duties. The claimant had some reservations about this arrangement and had mentioned them to the employer's witness. In essence, he felt that his workload would substantially increase. The employer's response was that the weekly average classroom instruction of thirty hours, plus the administrative work was well within reason in view of the claimant's annual salary of $78,000.

The matter came to climax on April 27, 1988 during a phone call made to the claimant by the employer's witness from a train bound for New York. The purpose of the call was regarding the discharge of Guy Pehaim and during this conversation, the claimant expressed an unwillingness to assume the extra teaching assignment and suggested that the employer might retain Pehaim and lay him off.

At this point, there is a divergence of recollection, or interpretation, of the parties. The employer's witness recalls the claimant as acquiescing in her assumption that he was resigning the employment and her letter of April 29, 1988 serves as a confirmation of that conclusion (See claimant's Exhibit No. 3). The claimant's recollection is that he did not resign his position and rendered such a denial in writing dated May 2, 1988 (See claimant's Exhibit No. 2).

CONCLUSIONS OF LAW

Section 6(a) provides that an individual is disqualified for benefits when his or her unemployment is due to leaving work voluntarily. This Section of the Law has been interpreted by the Court of Appeals in the case of Allen v. Core Target City Youth Progrma, (275 Md. 69), and in that case the Court said: "As we see it, the phrase 'due to leaving work voluntarily,' has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment."

The claimant's Exhibit No. 1 consists of a April 29, 1988 reconstruction of the critical telephone conversation of April 27, 1988 between the claimant and the employer's witness, Lucille Hart. In the eleventh paragraph of the statement as reconstructed by the claimant, he states "Well, I've given this some thought, and I think you should lay me off instead of Pehaim. "

In this statement, by his own recollection and account, the claimant, after balking at the increase in the teaching assignment, requested the employer to lay him off. Although words to the effect of "I resign" were not used, they were clearly not necessary. The claimant had "given this some thought" and, in his own words, was asking the employer to lay him off (rather than another employee) primarily because the claimant felt he could not or would not, handle the increased course load. The circumstance that the claimant was seeking separation more subtly through a negotiated layoff instead of an overt resignation is immaterial; the requisite intent to separate existed and was sufficiently manifested to satisfy the requirements of Section 6(a). Under the circumstances presented, neither good cause nor valid circumstances is demonstrated.

DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning May 1, 1988 and until such time as he becomes re-employed, earns at least ten times his weekly benefit amount.

The determination of the Claims Examiner is reversed.

Louis Wm. Steinwedel
Deputy Chief Hearing Examiner

Date of hearing: 7/19/88
amp/Manz/4667, 4652
Copies mailed on July 25, 1988 to:

Claimant
Employer
Unemployment insurance - Eastpoint (MABS)

Lincoln Weed, Esquire
Dickstein, Shapiro & Moran