

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

**BOARD OF APPEALS**

Thomas W. Keech, Chairman  
Hazel A. Warnick, Associate Member  
Donna P. Watts, Associate Member

**— DECISION —**

Decision No.: 83-BH-89  
Date: January 31, 1989  
Claimant: Donald L. Johnson  
Appeal No.: 8807572  
S. S. No.:  
Employer: Minneapolis Postal Data Center L.O. No.: 1  
ATTN: Payroll Processing  
Appellant: CLAIMANT  
Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law and whether the claimant was discharged for gross misconduct or misconduct, connected with the 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON March 2, 1989

**— APPEARANCES —**

FOR THE CLAIMANT:

Donald L. Johnson - Claimant  
Peter Sabonis - Legal Aid Bureau

FOR THE EMPLOYER:

Deborah King -  
Comp. Services  
Spec.

## EVALUATION OF THE 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 into this case, as well as the Department of Economic and Employment Development's documents in the appeal file. The parties at the hearing agreed that certain court criminal docket records could be admitted into evidence after the hearing.

## FINDINGS OF FACT

The claimant was employed by the United States Postal Service from November 10, 1987 until December 8, 1987 as a casual temporary employee, at an hourly wage rate of \$5.00.

Prior to being hired by the Postal Service, the claimant filed an application for employment. The application included a question regarding whether the claimant had ever been convicted of any offense against the law. The claimant answered no, that he had not been convicted. A State Police criminal record check revealed a conviction for a burglary. The claimant was told, because of the criminal record and application falsification, that he had to resign or he would be fired. The claimant resigned.

A subsequent investigation into the Judge's docket by the claimant's attorney revealed that the criminal record was incorrect to the extent that the claimant had not been convicted of burglary, but rather of receiving stolen goods. The claimant received a \$200.00 fine and 60 days in jail. The jail sentence was suspended, but the claimant was placed on 18 months probation.

## CONCLUSIONS OF LAW

The Board concludes that the claimant was discharged for gross misconduct within the meaning of Section 6(b) of the law.

It is a well established rule of law that a claimant who resigns in lieu of discharge, does not show the requisite intent to quit. See, Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d, 237 1975. A case involving a resignation in lieu of discharge, therefore is, treated as a termination under 6 (b) or 6(c) of the law.

In this case, it is uncontradicted that someone gave the claimant the choice to resign or be fired. Therefore, the resignation was not a voluntary quit, but instead, a termination under 6(b) or (c).

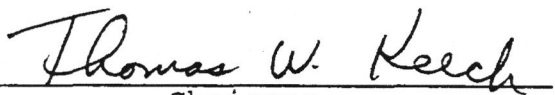
The reason that the employer requested the claimant's resignation was that the claimant's criminal record revealed a conviction, while on his application, the claimant stated that he had no convictions. Before the Hearing Examiner, the claimant claimed that the conviction was actually that of another Donald Johnson. However, a review of the criminal docket subsequent to the hearing before the Board revealed that, while the conviction for burglary was incorrect, the claimant was convicted for the receipt of stolen goods for which he received a fine, suspended jail sentence and 18 months probation. There was no other Donald Johnson involved in this.

The claimant argues, under Solomon v. Suburban Hospital, 289-BH-83, that the falsification of the application regarding the claimant's criminal record is nothing more than simple misconduct. However the falsification referred to in Solomon, dealt with a 72 year old man misrepresenting his age by ten years in order to get a job. In this case, the claimant misrepresented a much more serious issue, i.e. his past criminal record. A falsification of a criminal record is always material, especially in this case where the conviction that was hidden was for the receipt of stolen goods.

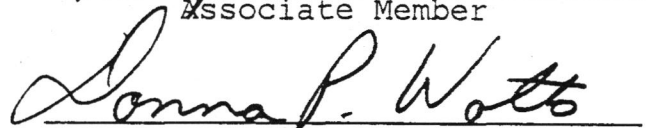
#### DECISION

The claimant was discharged for gross misconduct, within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning December 6, 1987, and until the claimant becomes reemployed, earns at least ten times his weekly benefit amount (\$1,090.00) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
Chairman

  
Associate Member

  
Associate Member

K:H:D

kmb

DATE OF HEARING: November 29, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

J. Peter Sabonis, Esquire  
Legal Aid Bureau, Inc.

United States Postal Service  
ATTN: Deborah King  
Main Post Office

UNEMPLOYMENT INSURANCE - BALTIMORE

STATE OF MARYLAND  
APPEALS DIVISION  
1100 NORTH EUTAW STREET  
BALTIMORE, MARYLAND 21201  
(301) 383-5048

STATE OF MARYLAND  
William Donald Schaefer  
Governor

C O R R E C T E D

- DECISION -

Date Mailed: August 15, 1988

Claimant: Donald L. Johnson

Appeal No.: 8807572

S.S. No.:

Employer: Minneapolis Postal Data Center L.O. No.: 1

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct connected with the work within the meaning of Section 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 518, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

NOTICE. APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK August 30, 1988

---

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Donald L. Johnson - Claimant

Ellen Snyder -  
Supervisor of  
Compensation and  
Staffing

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits, effective March 6, 1988.

The claimant was employed by the U.S. Postal Service from November 10, 1987 to December 8, 1987 as a casual, temporary employee at an hourly wage rate of \$5.00.

The claimant submitted a written resignation giving no reasons for separation.

The claimant now gives information that the reasons for resigning was brought about by pressure from the Postal Service who confronted him with a State Police report indicating that he was found guilty of criminal offenses, and the claimant failed to indicate his police record on his pre-employment application.

The claimant maintains that the individual's police record as shown by the State Police report was not him. The claimant was given an opportunity to straighten out the record and submitting the correction by the State Police to this Hearing Examiner. The claimant has failed to produce such a correction.

CONCLUSIONS OF LAW


As the claimant failed to document his statement that the State Police report concerning him being convicted for criminal offenses was in error, the claimant's submission of a written resignation demonstrates a will, design and intent to leave one's work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

There are no serious and/or valid circumstances present to warrant the imposition of a disqualification less than the maximum permitted under the Maryland Unemployment Insurance Law, for the claimant submitted a resignation to the Postal Authorities giving no reason and he has failed to submit documentation that the police report was in error.

DECISION

The claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. The claimant is disqualified from receiving unemployment insurance benefits for the week beginning December 6, 1987 and until the claimant becomes re-employed, earns at least ten times his weekly benefit amount (\$1,090) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

  
Selig A. Wolfe  
Hearing Examiner

Date of hearing:7/25/88  
amp/Specialist ID: 01068  
Copies mailed on August 15, 1988 to:

Claimant  
Employer  
Unemployment insurance - Baltimore (MABS)

United States Postal Service