



William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5032

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

- DECISION -

Decision No.:	969 -SE-93
Date:	May 28 , 1993
Claimant:	G. M. Warren
Appeal No.:	9222157
S.S. No.:	
Employer:	Melwood Horticultural Training Center, Inc.
L.O. No.:	93
Appellant:	CLAIMANT

Issue: Whether the claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to appeal can be found in many public libraries, in the Annotated Code of Maryland, *Maryland Rules*, Volume 2, B roles.

The period for filing an appeal expires

June 27, 1993

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Granison Warren - Claimant

Paula Rogers -
Training Manager
Ramon Lugo -
Witness

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 in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

FINDINGS OF FACT

The claimant filed for unemployment insurance benefits in the College Park Local Office with an effective date of June 21, 1992. His weekly benefit amount was determined to be \$217.00.

The claimant worked at Melwood Horticultural Training Center, Inc. from September 20, 1990 to August 28, 1992. He was last employed in the position of a stocker in their warehouse. He was earning \$8.01 an hour, and he was required to work 40 hours per week.

The claimant voluntarily quit his position, approximately two weeks before the employer's contract with Andrews Air Force Base was to expire, after he felt he received permission from his supervisor to do so.

On August 28, 1992, the claimant, as well as other employees, were sent written notification that the employer's contract with Andrews Air Force Base Commissary was to expire on September 30, 1992. Not wishing to remain and work the remaining few weeks before the contract expired, the claimant approached the person whom he believed to be his supervisor and obtained permission to leave the employer's premises immediately. The individual who authorized the claimant's actions was not his supervisor, and she did not have the authority to allow the claimant to leave prior to September 30, 1992.

Had the claimant elected to remain with the employer and work until September 30, 1992, he was not guaranteed a transfer to any other employer job sites.

CONCLUSIONS OF LAW

The claimant voluntarily quit his job, without good cause, but with valid circumstances within the meaning of the §8-1001 of the Labor and Employment Article. In this case, good cause does not exist because the reason for the claimant's leaving, his lack of interest in working the remaining few weeks before the employer's contract with Andrews Air Force Base was to expire, was not sufficient to amount to good cause.

The claimant's reason for leaving, that the employer's contract would expire in a few weeks and the employer could not guarantee continued employment after that, was clearly

connected with the conditions of employment. It was also a "substantial cause." A substantial cause~ connected with the conditions of employment, is a "valid circumstance" which calls for the imposition of less than the maximum penalty, under §8-1001(c) (1)(i) and (e)(2)(i).

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning August 23, 1992 and the four weeks immediately following.

This penalty may also disqualify the claimant from receiving federal extended benefits, unless the claimant has been employed after the date of this disqualification.

The decision of the Hearing Examiner is modified.


Chairman


Associate Member

K:D

DATE OF HEARING: May 13, 1993

kmb

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - LANDOVER



William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5040

— D E C I S I O N —

Date:	Mailed 12/15/92
Claimant:	G. M. Warren
Appeal No.:	9222157
S.S.No.:	
Employer:	Melwood Horticultural Training Center, Inc.
L.O.No.:	93
Appellant:	Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003. Whether there is good cause to reopen this dismissed case under COMAR 24.02.06.02N.

— 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 OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE. MARYLAND 21201, EITHER IN PERSON OR BY MAIL

December 30, 1992

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON
NOTICE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK-

— A P P E A R A N C E S —

FOR THE CLAIMANT:

NOT PRESENT

FOR THE EMPLOYER:

Ann Sager, Human Resources Dir.

FINDINGS OF FACT

Pursuant to the employer's timely filed appeal, a hearing was scheduled for November 12, 1992. The employer was unable to appear for that scheduled hearing because of transportation problems. However, she did attempt to contact the Hearing

Examiner and explain that she would not be there. Transportation problems are an emergency as envisioned by COMAR 24.02.06.02N. Therefore, good cause will be found to reopen this dismissed case.

The claimant was employed by Melwood Horticultural Center, Incorporated from September 20, 1990 through August 28, 1992. At separation, the claimant was a shelf stocker at the Andrews Air Force Base commissary. This was a full-time job.

The claimant was not discharged by the employer. The claimant simply stopped showing up for work. On his last day of work, August 28, 1992, the claimant was given a letter that indicated that the employer's contract with the Andrews Air Force Base commissary would be terminated on September 30, 1992. In that same letter, the employees were told that every effort would be made to transfer employees in good standing into openings within the employer. However, the employees were expected to apply for those openings. The claimant was also told that he would be paid for his annual leave, and would be able to work through September 30, 1992.

The claimant's supervisor at the commissary notified the employer on September 10, 1992 that the claimant had not worked since August 28, 1992. No one had given the claimant permission to leave and, there was no misunderstanding because of the details of the letter.

CONCLUSIONS OF LAW

Good cause was shown by the employer to reopen this dismissed case within the meaning and intent of COMAR 24.02.06.02N.

Based upon the testimony presented at the appeal hearing, it is concluded that the claimant was not discharged by the employer. Rather, that same testimony indicates that the claimant voluntarily left his employment approximately one month before the employment was to end.

The Maryland Code, Labor and Employment Article, Title 8, Section 1001 provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good

cause or valid circumstances, within the meaning of Title 8, Section 1001.

Without the testimony of the claimant, it cannot be concluded whether he stopped going to work for good cause or for valid circumstances within the meaning of the Law. Therefore, it must be found that he was separated from employment voluntarily, without good cause or valid circumstances connected with the work, within the meaning of the Law and, the determination of the Claims Examiner will be reversed.

DECISION

Good cause was shown to reopen this dismissed case within the meaning and intent of COMAR 24.02.06.02N.

The claimant voluntarily left his employment, without good cause or valid circumstances connected with the work, within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1001. He is disqualified from receiving unemployment insurance benefits for the week beginning August 23, 1992, and until he becomes reemployed, earns at least ten times his weekly benefit amount (\$2,170) in covered employment, and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.


Seth Clark
Hearing Examiner

Date of Hearing: 12/8/92
Specialist ID: 07227
ah/CASSETTE IN FILE

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Claimant
Employer
Unemployment Insurance - College Park (MABS)