



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

- D E C I S I O N -

Decision No.:	1368-BH-93
Date:	August 6, 1993
Claimant: Terence Green	Appeal No.: 9304393
	S.S. No.:
Employer: CES Security, Inc.	L. O. No.: 45
	Appellant: CLAIMANT

Issue:
Whether the claimant left work voluntarily, without good cause, within the meaning of §8-1001 of the Labor and Employment Article; whether the claimant refused an offer of available, suitable work, within the meaning of §8-1005 of the law.

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 rules.

The period for filing an appeal expires September 5, 1993

- A P P E A R A N C E S -

FOR THE CLAIMANT:

Terence Green - Claimant

FOR THE EMPLOYER:

Martha Young -
Gibbens Company

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 was a full-time receiving clerk at Westinghouse for 14 years, earning about \$28,000 per year at the time of his layoff on December 30, 1992.

Beginning about February of 1991, the claimant took occasional part-time work for this employer, CES Security, Inc., as a security guard. He would take assignments from time to time when work was available, primarily on weekends but sometimes after his regular work. His pay varied, depending on the job.

Just prior to the claimant's layoff from Westinghouse, he was notified that he would have to work a lot of overtime up until his last day of work. He was paid time-and-a-half rates for this overtime, which was required from sometime in November until December 30, 1992.

CES Security, Inc. called the claimant on November 23, 1992, offering him an assignment. The claimant accepted that assignment but informed this employer that he would no longer be able to accept assignments. CES Security, Inc. operates somewhat like a temporary agency, keeping people on the rolls virtually indefinitely, whether they accept assignments or not. After he applied for unemployment, he was offered an assignment doing security guard work sometime in January, but he refused.

The claimant has obtained full-time work.

CONCLUSIONS OF LAW

The Board concludes that the claimant voluntarily quit his job at CEO Security, Inc. on November 23, 1992. It was at that point that he informed the employer that he was no longer going to perform services for them. This constitutes a voluntary quit, no matter how long the employer keeps the claimant on its rolls.

The quit, however, was for good cause within the meaning of §8-1001 of the Labor and Employment Article. The claimant quit because his part-time temporary job was interfering with the overtime requirements of his regular job. The claimant was being paid 150% of his regular hourly salary for working this overtime, and the overtime was required in any case by the employer. In the case of Pangborn v. Hannah's (473-BR-82), the Board ruled that quitting

one's part-time job in order to conform to the requirements of one's full-time job constitutes good cause, connected with the conditions of employment. This case is similar to that case.


With respect to the offer of work issue, the Board notes that there is no record of any specific offer of work made in January of 1993. The claimant apparently simply called CES once again in January to reiterate that he was not interested in working for them. Even if the claimant had been offered a part-time temporary assignment, the Board would find that that was not suitable work within the meaning of §8-1005 of the law. The fact that a claimant performs some employment paying well below his regular employment as an extra job while fully employed does not make that type of work automatically suitable as a reasonable job choice once the person has lost their full-time job. The claimant sought and obtained regular full-time work instead.


DECISION

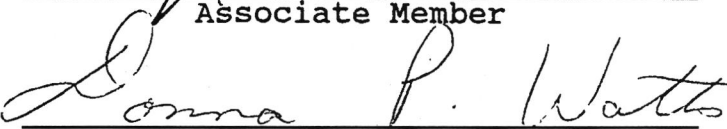
The claimant voluntarily quit his employment, but with good cause within the meaning of §8-1001 of the Labor and Employment Article. No disqualification is imposed based upon his separation from CES Security, Inc.

The claimant was not offered available, suitable work within the meaning of §8-1005 of the Labor and Employment Article. No disqualification is imposed based upon his subsequent contact with CES Security, Inc.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member


Associate Member

K:W:W

kbm

Date of Hearing: June 15, 1993

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - NORTHWEST



Maryland

Department of Economic & Employment Development

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 —

Mailed 3/25, /93

Claimant: Terence C. Green

Date:

Appeal No:

9304393

S. S. No.:

Employer: CES Security, Inc.

L.O.No.:

45

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.

— 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

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

April 9, 1993

NOTICE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE US. POSTAL SERVICE POSTMARK

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

PRESENT

REPRESENTED By:
Rick Blum, Asst. Operations
Manager; Chris Pfeltz for
Gibbens Co.

FINDINGS OF FACT

The claimant was employed as a part-time security guard from Forbear 3, 1992 through January 21, 1993 at a varied rate of pay

depending on what security job he was assigned to.

The claimant last worked on an assignment for this employer on November 23, 1992. Since November 23, 1992, the claimant was offered security guard positions for five days in December, 1992 and for one weekend in November, 1992 and one weekend in December, 1992 which the claimant was not available to work.

The claimant contacted the employer on January 21, 1993 and stated that he would no longer be working with this employer.

CONCLUSIONS OF LAW

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, within the meaning of Title 8, Section 1001.

In the instant case, the testimony of both the employer and the claimant clearly sets forth a scenario of where the claimant had another job and was also working part-time for this employer. The claimant had been, from the to time, offered jobs as a security guard at certain locations by the employer, but for numerous times the claimant, since November 23, 1992, told the employer that he was unavailable for work. The claimant testified that someone at the unemployment office told him that he was terminated by the employer which the employer denies and on the same day that the claimant was at the unemployment office, he called the employer and resigned.

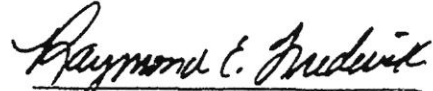
DECISION

It is held that the unemployment of the claimant was due to his leaving work voluntarily, without good cause, within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1001.

Benefits are denied the claimant for the week beginning January 17, 1993 and until the claimant becomes re-employed, earns at least fifteen times his weekly benefit amount in covered wages, and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

It is also held that if, as a result of this decision, the claimant has received benefits for which he was ineligible any payment as a result thereof must be repaid by the claimant within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 809.


Raymond E. Frederick
HEARING EXAMINER

DATE OF HEARING: 3/18/93
Specialist ID: 45538
gr/CASSETTE IN FILE
SEQ: 04

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Claimant
Employer
Unemployment Insurance - Northwest (MABS)
Recoveries - Room 413