Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

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

William Donald Schaefer, Governor
J. Randall Evans, Secretary

— DECISION —

Decision No.: 152-BR-89

Date: Feb. 27, 1989

Claimant: Mary K. Revnolds

Appeal No.: 8812583

S S. No.:

Employer: Spa Lady U S A, Inc.
ATTN: Susan Charles, Area Supvr.
Oakton Corporate Center II

L. O. No.: 40

Appellant: CLAIMANT

Issue: Whether 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.

— 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 29, 1989

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

In making this review, the Board has not considered those documents included by the claimant in a folder which had been submitted to the Hearing Examiner. At the previous hearing, the Hearing Examiner incorrectly refused to admit these documents into evidence on the ground that the claimant had not sent the documents to the employer prior to the hearing. This ruling is incorrect, as the appeals regulations require the Hearing Examiner, not the party, to forward any written information by mail to the other party prior to the hearing. COMAR 24.02.06.02 T (3)

The Hearing Examiner's ruling in this regard, however, will be affirmed because the documents were submitted to the Hearing Examiner at a time too late for them to be forwarded to the employer. Of course, the Board could, at this point, send the documents to the employer and give the employer another hearing for the sole purpose of cross-examining the claimant on the document and making any objections to its admission and submitting rebuttal evidence. The Board will not do so, because it is not necessary to consider these documents in order to reach its decision.

The Board disagrees with the Hearing Examiner's finding of fact that the claimant's primary reason for quitting was her dismay at her employer's requirement that she immediately take her cat home on her last day of work. The Board finds as a fact that the primary reason that the claimant quit her job was because of a pay dispute with her employer.

The claimant was hired by the employer as a salaried employee, earning $750.00 per month. (She also apparently had the ability to earn some type of commission.) When the claimant either missed time or was not scheduled for hours during a week, her employer prorated her pay. The employer prorated her pay at the rate of $4.33 per hour. This proration occurred to some extent because the claimant began and ended her employment during the middle of salary periods. This proration also was carried out when the claimant missed hours of work because of personal problems or because of scheduling problems. The claimant was dissatisfied with the rate of proration. She expected any proration to be at $4.69 per hour. This reflected her belief, obtained through her contacts with her employer prior to hiring, was that the maximum that she could work was 160 hours per month (four 40 hour weeks).

The employer actually figured the proration as follows. The employees were considered to be on a salary of $9,000 per year. When that salary was divided by 2,080 (representing 40 hours per week in each of 52 weeks), the hourly rate was $4.33. This calculation was not explained to the claimant at the time of hiring.

The claimant complained extensively about this $4.33 rate. As a result, the employer did agree to pay the claimant at the rate of $4.69 per hour beginning on October 15, 1988. This same employer representative who made this agreement with the claimant, however, later changed her mind and stated that the $4.69 amount would not be paid.

The claimant clearly resigned her job because of a disagreement arising out of a misunderstanding of her salary arrangements. This misunderstanding was the fault of the employer. The employer informed the claimant that she was being hired for a monthly salary when, in fact, she was being paid by the hour. This discrepancy concerning method of payment, did not in itself lead to the claimant's resignation. It did, however, directly lead to the misunderstanding about the proration amount. The claimant was simply told that she was on salary, and the employer's method of calculating the proration amount was not explained to her at all. The claimant's method of calculating the proration amount was not unreasonable. In fact, the employer agreed with it and adopted it for a short time. The original cause of the misunderstanding was the employer's incorrect language that the claimant was hired at a salary. By making this statement, the employer accepted the risk that a misunderstanding would arise if an hourly proration was later done.

The Board concludes that this misunderstanding amounts to a substantial cause connected with the conditions of employment and therefore, amounts to "valid circumstances" as that term is used in Section 6(a) of the law. The Board concludes that it does not amount to good cause, however, for the following reasons. The employer did not violate any clear agreement as to wages which was made at the time of hiring. The employer was simply following its own policy as to proration, a policy which was not totally unreasonable. Since this was a misunderstanding that was the employer's fault, the employer must bear the responsibility, but there was no deception involved, nor was there any violation of an express payment agreement.

DECISION

The claimant voluntarily left her employment, without good cause but with valid circumstances, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits from the week beginning October 9, 1988 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:H
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

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: 1/6/89

Claimant: Mary K. Reynolds

Appeal No.: 8812583

S.S. No.:

Employer: Spa Lady U S A, Inc.
Oakton Corporate Ctr. II

L.O. No.: 40

Appellant: Employer

Issue: Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meanin of Section 6(a) 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 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 January 23, 1989

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:

Claimant - Present

FOR THE EMPLOYER:

Susan Charles,
Area Supervisor

FINDINGS OF FACT

The claimant was employed as a Fitness Instructor/Salesperson by Spa Lady USA, Inc. She worked there from September 3, 1988 until October 12, 1988. The claimant had a on-going discussion with her employer about the amount of her salary. The claimant had been hired at a rate of $750.00 a month plus commissions. Her first checks did not reflect that rate because she had not worked that full month. The claimant became upset about this and discussed it with management and management offered to correct the situation by paying her a back payment of $26.00 for money

she should have received and by raising her salary to a hourly rate of $4.69 per hour effective October 15, 1988. The claimant had not left her work or given a notice that she was going to leave her work during the occurrence of these discussions. The claimant, however, on her last day of work, had brought a kitten to work and lodged it in the boiler room of the establishment. She was told that around three o'clock that keeping the animal on the premises violated health rules and that she should take the animal home. The claimant left at 3:00 p.m. to take the animal home and did not return to work, although she was scheduled to work until 9:00 p.m. that night. When she left, she informed a supervisor that she would not be returning to work that evening. The next day she submitted a letter of resignation detailing a number of reasons for quitting.

The discussions between managment and the claimant concerning salary were confusing at best, when she was hired and the weeks subsequent when she was working out her hourly rate with the employer.

CONCLUSIONS OF LAW

I conclude that the claimant's "principal reason for leaving her job was the fact that she resented the fact of being made to take her cat home from the employer's premises at three o-clock in the middle of her work day. The claimant listed a number of other reasons in her letter of resignation but most of those problems had already been worked out and had the claimant remained on the job, it is clear it would have been worked out to her satisfaction. Because she quit for such a frivalous reason, I find that the claimant quit, without good cause and without valid or serious circumstances and that she should be disqualified under Section 6(a) of the Law.

DECISION

The claimant voluntarily left her employment without a good cause connected with her work, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving unemployment insurance benefits for the week beginning October 9, 1988 and until she becomes re-employed and earns at least ten times her weekly benefit amount.

he determination of the Claims **Examiner** is reversed.

Martin A. Ferris
Hearing Examiner

Date of Hearing: December 22, 1988
lr/Specialist ID: 40312/8456
Copies mailed on January 6, 1989 to:

Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)