

# 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.:	183-BR-89
	Date:	March 15, 1989
Claimant:	Appeal No.:	8811087
	S. S. No.:	
Employer:	L. O. No.:	13
	Appellant:	EMPLOYER

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 her 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.

April 14, 1989

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

**— 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, though this will have no effect on the claimant.

There was a conflict in the evidence in this case as to whether the claimant gave the employer a definite date that she was resigning or whether she simply indicated that she was going to resign at some time in the future. The Hearing Examiner resolved this conflict by finding as a fact that the claimant did not state to the employer that she was resigning on a definite date. The Board adopts this finding of the Hearing Examiner.

Since the claimant merely stated to her employer that she intended to resign sometime within the next few months, conditioned upon her getting her own business (a day care center) started, the claimant cannot be considered to have actually resigned the employment. The Board has ruled in the past that, although a resignation may be made verbally, every statement made by an employee that she intends to leave in the future is not necessarily a resignation. Ludwig v. Docktor Pet Center (120-BR-85). The entire circumstances must be examined in order to determine whether the statement is a resignation or not. In this case, the fact that the claimant did not give a definite date on which she would resign, coupled with the fact that her plans were described to the employer as less than definite, lead the Board to conclude that her statement does not amount to a resignation.

Upon hearing the claimant's statement, the employer set a date for the claimant to leave the employment. There appear to have been three reasons for this action: (1) the employer was getting ready to cut some positions anyway due to a slowdown of work; (2) the claimant had stated that she intended to leave as soon as she get her day care business started; and (3) the claimant had missed many days of work and was considered a problem employee because of her absenteeism. For all of these reasons, the employer eagerly seized upon the claimant's idea and set the last day of work for August 31, 1988.

The Board concludes that the employer has failed to meet its burden of showing that the claimant committed misconduct sufficient to disqualify the claimant under either **Section 6(b)** or **6(c)** of the Maryland Unemployment Insurance Law. The claimant did miss a substantial amount of time, but it is apparent even from the employer's testimony that the claimant had a reasonable excuse for most of these occasions. More importantly, the main reason for the discharge was that business was slow, layoffs were imminent, and the claimant seemed to be a good person to lay off first, given her intention to leave in the near future anyway. When a layoff is going to occur anyway, the fact that an employee is chosen

to be laid off first based on a poor work performance does not change the layoff into a discharge for misconduct.

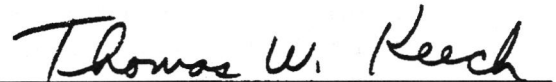
Since the claimant was discharged, but not for any misconduct within the meaning of Section 6(b) or 6(c) of the law, no penalty will be imposed.


#### DECISION

The claimant did not voluntarily quit her employment, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The claimant was discharged, but not for gross misconduct or misconduct, connected with her work, within the meaning of Section 6(b) or 6(c) of the Maryland Unemployment Insurance Law. No penalty is imposed based upon her separation from employment with Majestic Industries.

The decision of the Hearing Examiner is reversed.

  
Chairman

  
Associate Member

K:HW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - ELKTON

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

STATE OF MARYLAND  
William Donald Schafer  
Governor

- DECISION -

Date: Mailed: 1/18/89  
Appeal No: 8811087  
S.S. No.:  
Claimant: Connie L. Wert  
Employer: Majestic Industries, Inc. Lo. No.: 013  
c/o ADP Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law.

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-NOTICE OF FURTHER APPEAL-

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY COURT 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 2/2/89. NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

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- APPEARANCES -

FOR THE CLAIMANT:

Connie L. Wert - Present

FOR THE EMPLOYER:

Barbara McKinnon,  
Employer Relations  
Director; and  
Gabrielle Allen, ADP

FINDINGS OF FACT

The claimant was employed by Majestic Industries, Incorporated from June 8, 1988 until August 31, 1988. She was a data entry clerk earning \$6.60 hourly. The claimant worked from 7:30 a.m. until 4:00 p.m., 40 hours a week.

On or about August 1, 1988, the claimant advised her supervisor that she wished to resign, to start a day care center for small

children. She gave no date of leaving, because it would take several months to get her license and establish the business.

Before her last day of work, the claimant learned that she could not start a day care center, and she requested that her resignation be rescinded.

The claimant had a record of absenteeism for illness and child care problems and the employer was facing a layoff situation. Under these circumstances, the employer accepted the claimant's resignation.

#### CONCLUSIONS OF LAW

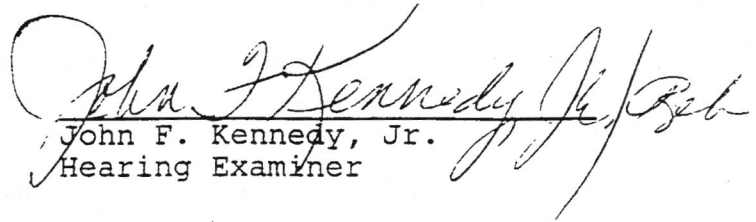
In the case of Robert v. Tracer, Jitco, 911-BR-83, the Board of Appeals held that: When a claimant's resignation is tendered, the employer is under no obligation to disregard the resignation even where the claimant seeks to revoke it during the notice period.

While normally resigning to start one's own business under Section 6(a) of the Law is neither good cause, nor valid circumstances, in this case, the claimant informed the employer before her last day of work, that she was not going to pursue the establishment of the day care center and she wanted to revoke her resignation. Under such circumstances, within the purview of the above-captioned case, the claimant's resignation must be considered to be a voluntary quit, but in this case, it is found that the claimant had in effect, good cause for resigning because there was no work for her and she was facing a layoff. The determination of the Claims Examiner will be reversed.

#### DECISION

The claimant left her employment voluntarily, but for good cause, within the meaning of Section 6(a) of the Law. No disqualification will be imposed, based on her separation from employment with Majestic Industries, Incorporated. The claimant may contact her local office about the other eligibility requirements of the Law.

The determination of the Claims Examiner is reversed.

  
John F. Kennedy, Jr.  
Hearing Examiner

Date of hearing: 11/4/88  
rch/Specialist ID: 13367/7022  
Copies mailed on 1/18/89 to:

Claimant  
Employer  
Unemployment Insurance - Elkton (MABS)

ADP  
Joppa Road & Mylander Lane  
Baltimore, MD 21204