

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	2-BR-92
	Date:	January 3, 1992
Claimant: John Casamento	Appeal No.:	9115409
	S. S. No.:	
Employer: Merrill Lynch Pierce	L O. No.:	50
	Appellant:	CLAIMANT
Issue:	Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.	

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE 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

February 2, 1992

— 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.

The claimant in this case was informed by his employer that his office was to be closed in the near future and that two persons were to be laid off right away. The claimant then informed the employer that he would volunteer to be one of the two laid off if it would save the job of another worker.

The employer accepted the claimant's offer, and he was laid off. He received a special financial separation package reserved for laid-off workers. This meant that he continued to receive his pay for months, until March 1, 1991. After that time, he applied for benefits.

In the case of Conroy v. Alto-Gravure (436-BH-86), the employer had decided to lay off seven people out of the work unit. The employer so notified the union. Under the union rules, those with the least seniority would have to be laid off, unless there were volunteers. Mr. Conroy and some other claimants volunteered. They would not have otherwise been laid off, but there would have been the same number of layoffs whether they volunteered or not. The Board ruled that this was a layoff affecting seven jobs, and that the manner in which the seven persons were chosen did not change this layoff into a voluntary quit.

The same situation applies in this case. The employer had already decided to lay off two people immediately from that particular office. Those two people are considered laid off for purposes of the unemployment insurance law, whether they are chosen by the employer, a third party (such as a union) or whether they chose themselves. The layoff was caused by a lack of work, and the fact that the employer allowed this claimant to suggest that he be laid off does not change this fact.

DECISION

The claimant was laid off. He did not voluntarily quit, within the meaning of Section 8-1001 of the Labor and Employment Article. No disqualification is imposed based upon the claimant's separation from employment with Merrill Lynch Pierce.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech

Chairman

Donna P. Watts

Associate Member

K:D
kmb

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Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Claimant:	John Casamento	Date:	Mailed: 10/10/91
		Appeal No.:	9115409
		S. S. No.:	
Employer:	Merrill Lynch Pierce	LO. No.:	050
		Appellant:	Claimant

Issue:

Whether the claimant left work voluntarily, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001.

— 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 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 October 25, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present
(Via Telephone)

FOR THE EMPLOYER:

Not Represented

FINDINGS OF FACT

The claimant was employed between July 17, 1967 and August 31, 1990. At that point in time, by mutual agreement, the claimant's work responsibilities ceased. Effective September 4, 1990, he was reassigned to a period of employment, a salary and benefits continuation which was offered to him by the former employer,

which continued until March 8, 1991, at which time his employment was termed to have been permanently terminated.

Until the agreement which led to the separation, the claimant had been working full-time, earning \$30,000 a year, in the accounting department as a dividend and interest coordinator.

The credible evidence indicates that the Rockville, Maryland office of Merrill Lynch was going to be closing and the layoff of two people working at the office was imminent. The claimant, a senior employee, volunteered to be one of the individuals to be laid off. He was not approached by the employer, but rather, he initiated the separation, which was not ultimately accepted by the employer. The claimant simply does not know whether there would have come a point in time where it would have been required that his services ceased due to his layoff.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1001 provides that an individual is disqualified for benefits when his/her unemployment is due to leaving work voluntarily. This section of the Law has been interpreted by the Court of Appeals in the case of Allen v. CORE Target City Youth Program (275 Md. 69), and in that case the Court said: "AS we see it, the phrase 'due to leaving work voluntarily' has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment."

In this case, the employer did not initiate the separation. Although there were other individuals in the office where the claimant worked who were in danger of being laid off, at that time, the claimant was not one of them. In fact, he has no way of knowing whether he would have ever been laid off, or simply been offered a position elsewhere with the company. His decision to leave was made of his choice and own free will. He initiated the separation. The employer did not.

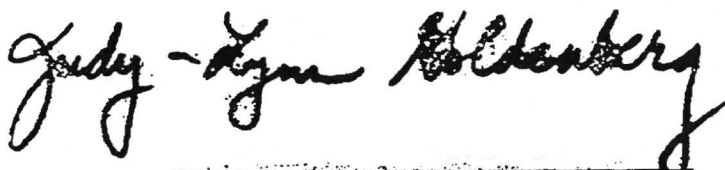
The Maryland Code, Labor and Employment Article, Title 8, Section 1001 provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or 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.

In this case, the claimant decided to quit voluntarily because he hoped to save two other individuals in the office their jobs. While his purpose or goal may have been laudable, the claimant's unemployment was not work related, in that his job was in no way threatened at that point in time, and his decision to leave was made for personal reasons, that is, his desire to see two of his less senior co-workers remain in their positions.

DECISION

It is held that the claimant unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001. The claimant is disqualified from receiving benefits from the week beginning March 3, 1991 and until he becomes re-employed and earns at least ten times his weekly benefit amount (\$2,150) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner below is hereby modified accordingly.



Judy-Lynn Goldenberg
Hearing Examiner

Date of Hearing: 10/8/91
ps/Specialist ID: 50503
Cassette No: 8350
Copies mailed on 10/10/91 to:

Claimant
Employer
Out-of-State Claims - (MABS)

Recoveries - Room 413