

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

— DECISION —

	Decision No.:	225-BR-89
	Date:	March 31, 1989
Claimant: John Butka	Appeal No.:	8813826
	S. S. No.:	
Employer: John Ferguson Co., Inc.	L. O. No.:	40
	Appellant	CLAIMANT

Issue:

Whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

April 30, 1989

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The Board finds as a fact that the claimant had worked for the employer before. He was rehired on December 9, 1987. At the time that he was rehired, it was clearly understood that his salary would be based solely on commission on sales that he made. It was also understood, however, that the claimant would be able to draw \$200 per week gross. This was basically an advance against the commissions that the claimant was to earn.

In about August of 1988, the pay system was changed. The basic system of payment on commission only, and the percentage of commission paid, was not changed. What was changed was the claimant's right to an automatic draw or advance of \$200 per week. Instead, the claimant had two choices: first, he could simply receive, for each pay period, the amount of money earned in commission during that period; or, second, he could build up earnings due to commission and draw a regular check based upon these credited earnings. Over any long period of time, the claimant's amount of pay would be exactly the same under the new or the old system. The only real change was that the claimant would not be allowed to collect any check in any week if the result of collecting that check would be for the company to be extending an advance to him.

Under the new system, the claimant collected a number of paychecks based on commission. Some were higher than usual, some were lower. On some occasions, nothing was paid. Since no evidence was presented with respect to the claimant's previous average earnings, or his average earnings after the change in payment method, no finding of fact can be made concerning whether the claimant's long-term earnings were going up or down, or were staying the same. The Board does find as a fact, however, that the claimant's take-home pay each week became much more erratic and unpredictable and sometimes was nonexistent.

CONCLUSIONS OF LAW

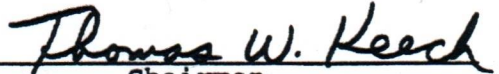
The Board agrees that the claimant did not have good cause for leaving the employment. The basic amount and method of compensation was not changed. In the long run, the claimant would earn exactly the same amount of money under the new system as under the old. As noted above, there is insufficient evidence to make any finding that the claimant's actual long-term gross earnings were significantly reduced. For this reason, the claimant did not have good cause for leaving his employment.

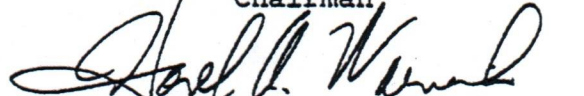
The Board does find, however, that the claimant had "valid circumstances" to leave the employment, as that term is used in Section 6(a) of the law. The Board concludes that the change in method of payment was a "substantial cause, connected with the conditions of employment" within the meaning of Section 6(a) of the law. Although this change in method of payment may not seem significant from a long-term accounting standpoint, it clearly was a substantial and detrimental change from the point of view of an employee who needs a regular and predictable stream of income in order to keep financially afloat. For this reason, the Board concludes that the claimant did have valid circumstances within the meaning of Section 6(a) and that a mitigated penalty should be imposed.

DECISION

The claimant voluntarily left his employment, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He left his employment, however, for "valid circumstances" within the meaning of Section 6(a) of the law. Benefits are denied from the week beginning November 20, 1988 and the seven weeks immediately following.

The decision of the Hearing Examiner is modified.


Chairman


Associate Member

K:HW

kbm

COPIES MAILED / TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 382-6000

STATE OF MARYLAND
William Donald Schaefer
Governor

- DECISION -

Date: Mailed: 1/31/89
Claimant: John J. Butka Appeal No.: 8813826
o:
Employer: John Ferguson Co Inc. LO. No.: 40
Appellant: Claimant

Issue: Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

- NOTICE OF RIGHT TO PETITION FOR REVIEW -

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SEC OFFICE 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

2/15/89

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:

Drama Charron,
Secretary/Treasurer
Bookkeeper

FINDINGS OF FACT

The claimant, who had previously worked for this employer, was rehired on December 9, 1987 as an inside Salesperson at a pay rate based on straight commission. At the time of rehire, he elected to be paid on a draw versus commission basis. This was not a guaranteed draw. On November 23, 1988, the claimant quit the employment because he was not making enough money per week in that sales were down. The employer's method of paying the claimant which had existed from the time of rehire in 1987, had not changed at the time of the claimant's decision to quit his employment on November 23, 1988.

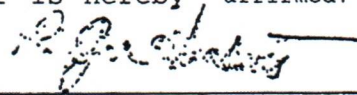
CONCLUSIONS OF LAW

It is held that the claimant voluntarily quit his employment for reasons which do not constitute good cause for so doing in that they are not directly attributable to the employer and/or the employment. It is further held that valid circumstances sufficient to warrant a weekly disqualification have not been presented.

DECISION

The claimant voluntarily quit his employment, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning November 20, 1988 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,050) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is hereby affirmed.



P.J. Hackett
Hearing Examiner

Date of hearing: 1/27/89

rc

(0534-B)-Specialist ID: 40302

Copies mailed on 1/31/89 to:

Claimant

Employer

Unemployment Insurance - Eastpoint - MABS