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.: 23-BR-91

Date: January 7, 1991

Claimant: Charles T. Butts

Appeal No.: 9013323

S. S. No.:

Employer: Frederick Foundry & Machine, Inc.

L O. No.: 4

Appellant: CLAIMANT

Issue:

Whether the claimant filed a valid and timely appeal, within the meaning of Section 7(c)(3) of the law; whether the claimant failed, without good cause, to apply for or to accept available, suitable work within the meaning of Section 6(d) 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 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 AT MIDNIGHT ON February 6, 1991

— 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 with respect to Section 7(c)(3) of the law. The Board concludes that the

claimant had good cause for filing his appeal late in this case. The claimant had received a similar determination disqualifying him for voluntarily quitting the same employer. The claimant had appealed that decision and had obtained a Hearing Examiner's decision on the appeal. This determination (a COPY of which is not in the record in this case) apparently disqualified this claimant for failing to accept work with this same employer. When the claimant received this, he assumed that this was the matter which he had already taken care of by going to the Hearing Examiner's hearing in his 6(a) case (case #9011664). The reasons for the claimant's confusion are understandable in this case. Under the mandate of the statute, which requires that the merits of cases be reached whenever possible, the Board will find that the claimant had good cause for filing his appeal late within the meaning of Section 7(c)(3) of the law.

On the merits, the Board reverses the decision of the Claims Examiner. The Board has previously ruled that, where a maximum penalty is imposed under Section 6(a) of the law for leaving employment, an additional penalty cannot be imposed under Section 6(d) of the law for refusing to return to that same employment. This is true at least where the reason for refusing to return to the old employment is the same reason that the claimant quit the employment in the first place. As the Board pointed out, once a claimant has been given the maximum penalty under Section 6(a) of the law, the statute clearly intends that no further penalty be imposed in this situation. Reynolds v. Golden World Travel (591-BR-83), Buchan v. Salisbury Employment Office (708-BR-83).

In this case, of course, the claimant was not given the maximum penalty under Section 6(a) of the law. The reasons for his voluntarily leaving his employment were adjudicated, however, in case #9011664. In that case, the Hearing Examiner found that the claimant had "valid circumstances" for leaving his employment within the meaning of Section 6(a), due to the employer's failure to honor its predecessor's agreement with the claimant, resulting in the claimant being dunned for a $6,000 debt which the predecessor employer should have paid. Ruling that this reason was a substantial cause connected with the conditions of employment, the Hearing Examiner imposed only a five-week penalty under Section 6(a) of the law.

This case concerns the fact that the claimant was offered his same job back by the same employer a few weeks later. The claimant refused this job for the same reasons that he originally quit it. That is, the employer's predecessor still had not paid the $6,000, and this employer still refused to pay it. In addition, even this successor employer had not

diligently and promptly remitted the health insurance payments to Blue Cross and Blue Shield, thereby causing extensive disruption of the claimant's finances, resulting in some emotional turmoil.

Were the Board to rule on the claimant's 6(a) case, the Board would rule that the claimant had good cause for voluntarily leaving employment within the meaning of Section 6(a) of the law. For unemployment insurance purposes, a successor employer's violation of the terms of employment agreed to by the predecessor employer is good cause for quitting. A claimant for unemployment insurance has no control over, and possibly not even any knowledge of, the corporate technicalities by which employers sometimes change their legal status and, at times, their very identity. The Board has always ruled that these technicalities are irrelevant to the contract of employment between the claimant and the employer, as far as the unemployment insurance law is concerned. The employer's failure to honor the agreement that the employer reimburse the claimant for his substantial medical bills would constitute good cause.

The Board, however, has no jurisdiction over that issue, which was decided in Appeal #9011664 and cannot be relitigated here. The Hearing Examiner's decision in that case was issued on October 2, 1990 and was not appealed by any party. It is therefore final under Section 7(e) of the law. The five-week penalty imposed by Hearing Examiner Selig Wolfe remains in effect in that case.

The Board now rules, however, that the penalty imposed on the claimant for leaving a job for that reason cannot be appropriately added to or lengthened by referring the claimant once again to the same job. The claimant's reasons for refusing the job were exactly the same as his reasons for voluntarily quitting the job in the first place. To penalize him again for refusing the job for the exact same reasons he was penalized when he quit is inappropriate. The Board concludes that the work was not suitable. No penalty is therefore appropriate under Section 6(d) of the law.

DECISION

The claimant did not refuse suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the offer of work made on August 22, 1990 at Frederick Foundry & Machine, Inc. The claimant had good cause for filing his appeal late within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

K:HW
kbm
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - HAGERSTOWN

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

— D E C I S I O N —

Date: Mailed: November 8, 1990

Claimant: Charles 1. Butts

Appeal No.: 9013323

S. S. No.:

Employer: Frederick. Foundry & Mach, Inc

L. No.: 04

Appellant: Claimant

Issue: Whether the claimant failed, without good cause to apply for Or to accept, available, suitable work, within the meaning of Section 6(d) of the Law. Whether the appealing party filed a timely appeal or had good cause for an appeal filed late, within the meaning of Section 7(c)(3) of the Law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON November 23, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Charles I. Butts - Claimant
Linda Butts - Witness

FOR THE EMPLOYER:

Ben Ahalt,
Personnel Manager

FINDINGS OF FACT

A benefit determination mailed to the parties provides that the last day to file a timely appeal was September 28, 1990. In this case the appeal was filed in person on October 5, 1990.

The reason for the late appeal is as follows. The claimant was also disqualified from receiving benefits under Section 6(a) of the Maryland Unemployment Insurance Law. The claimant filed an appeal to that determination by the Claims Examiner. When the claimant received a subsequent determination in the mail that he was being disqualified from receiving benefits pursuant to Section 6(d) of the Maryland Unemployment Insurance Law, the claimant did not understand that he had to file another appeal if he disagreed with the second determination. He had earlier filed an appeal to the first disqualification. He did not receive any assistance from the local office before September 28, 1990, concerning information as to whether or not he had to file an appeal to the second benefit determination.

CONCLUSIONS OF LAW

In Premick v. Roper Eastern (141-BR-83), the Board of Appeals conferred upon the Appeals Division its own jurisdiction granted pursuant to Article 95A, Section 7(c)(3) to rule upon the issue of timeliness of appeal as well as the issue of good cause in the filing of a late appeal. In the instant case, the evidence will support a conclusion that the appellant filed a late appeal for reasons which do not constitute good cause under the provisions of Article 95A, Section 7(c)(3) and legal precedent construing that action.

In the instant case, the claimant was confused when he received two different benefit determinations. He did not realize that he had to file an appeal to the second benefit determination. However, the language in the benefit determinations was entirely separate from one another. One determination concerned Section 6(a) of the Law and another concerned Section 6(d) of the Law. The two benefit determination had different dates for the time to which to file an appeal. If the claimant had any doubt as to whether or not he had to file an appeal to the second benefit determination he could have and should have contacted the local office for assistance.

DECISION

The claimant did not file a valid and timely appeal within the meaning and intent of Article 95A, Section 7(c)(3).

The determination of the Claims Examiner and the disqualification applied remains effective and unchanged.

Gail Smith

Gail Smith
Hearing Examiner

Date of Hearing: October 30, 1990
bch/Specialist ID: 04458
Cassette No: 8608
Copies mailed on November 8, 1990 to:

Claimant
Employer
Unemployment Insurance - Hagerstown (MABS)