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.: 419 -BH-92

Date: Feb. 28, 1992

Claimant: Patricia E. Pinkney

Appeal No.: 9112381

S. S. No.:

Employer: Play Keepers, Inc.
ATTN: Sandra Gilmore, Pres.

L O. No.: 1

Appellant: EMPLOYER

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; whether the claimant failed, without good cause, to accept suitable work when offered to her within the meaning of Section 8-1005 of the law, and whether the claimant had a contract or reasonable assurance of returning to work under Section 8-909 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 March 29, 1992

— APPEARANCES —

FOR THE CLAIMANT:

Claimant Not Present

FOR THE EMPLOYER:

Maxine Seidman - Executive Dir.
Sandy Gilmore - Executive Dir.

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The Board had doubts that the claimant could be correctly disqualified under Section 8-903 of the law, but there were possibilities that the claimant should have been disqualified for voluntarily quitting her job or possibly for refusing suitable work. For this reason, the hearing notice listed all three issues as possibilities.

FINDINGS OF FACT

The claimant was employed from September of 1990 until the end of the 90-91 school year for Play Keepers, Inc. The claimant was a group leader, in charge of teaching young children for approximately 25 hours per week for $6.00 an hour. The employer is a program for school age children which provides day care from 7:00 to 9:00 a.m. and 3:00 to 6:00 p.m. It is not connected with the schools, but it does lease space from the schools and conducts day care programs in the schools before and after hours. It is a private, non-profit corporation.

The corporation operates during the summer at one location. During this time, the employer had full-time work available for its teachers and groups leaders. This position was offered to the claimant at the end of the school year, but she declined. She also did not return to this employer at the beginning of the 91-92 school year, as she obtained, or believed that she had obtained, a job with a different employer.

CONCLUSIONS OF LAW

The Board concludes that the claimant cannot be disqualified under Section 8-909 of the law. This is the section of the law that disqualifies educational employees from receiving unemployment benefits in the summer time if they have "reasonable assurance" of returning to work in September. The employer, however, is not the type of organization to which this statute applies. This statute applies only to "an educational institution or . . . governmental entity or not for profit organization on behalf of an educational institution . . . ." The day care program involved is not an educational institution, nor are its services performed on behalf of an educational institution. It merely leases space from various schools.

The next question is whether the claimant voluntarily quit her employment within the meaning of Section 8-1001 of the law. The Board concludes that the claimant did voluntarily quit her employment. Work was available for her both during the summer and during the following semester, but the claimant did not return. Ordinarily, in the case of a seasonal employer, an employee who announces to the employer that he will not be returning to the seasonal employment at the beginning of the next season should be disqualified for voluntarily quitting. In such a case, the Board has ruled that the penalty for quitting should begin at the beginning of the next seasonal period, that is, on the date when the claimant normally would be returning to the seasonal work. If this were such a case, the claimant would be disqualified only from the beginning of the next school year in September of 1991.

In this case, however, the claimant was offered continuous work during the summertime. In fact, the work offered to her was more substantial (i.e. full-time work vs. work of 25 hours per week) than that employment that she performed during the regular year. Its location was not that different from the location where she worked during the year. The Board has consistently ruled that a refusal of an employee to accept a transfer is a voluntary quit. That voluntary quit may be with "good cause" or it may be with "valid circumstances" within the meaning of the statute. This depends upon the circumstances.

The claimant has not met her burden of showing that she had either good cause or valid circumstances for voluntarily quitting. The job was in the same line of work, was not too far from where she was working, and constituted full-time as opposed to part-time employment. Under these circumstances, the burden is on the claimant to explain why she left the employment. The claimant has not appeared at either hearing and has not met her burden of showing either good cause or valid circumstances.

DECISION

The employer is not an educational institution, nor does it perform services on behalf of an educational institution within the meaning of Section 8-909 of the Labor and Employment Article. No disqualification is imposed on the claimant for having reasonable assurance within the meaning of Section 8-909.

The claimant did voluntarily quit her job, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning June 9, 1991 and until she becomes reemployed, earns least ten times her weekly benefit amount ($780.00) at thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed as to Section 8-809, modified with respect to Section 8-1001.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

Donna P. Watts
Associate Member

K:D:H
DATE OF HEARING: January 28, 1992
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

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 —

Date: Mailed: 01/22/92

Claimant: Patricia E. Pinkney

Appeal No.: 9122367

S.S. No.:

Employer: Play Keepers, Inc.

L.O. No.: 001

Appellant: EMPLOYER

Issue: Whether the claimant had a contract on a reasonable assurance of returning to work under Section 4(f) (4) 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 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 September 13, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Not Present

FOR THE EMPLOYER:

Sandy Gilman, Executive Dir. and Maxine Seidman, Vice President

FINDINGS OF FACT

The claimant was employed in September 1990 as a Group Leader with employer' s organization. The organization is a private, non-profit

corporation which provides day-care to school age children from 7:00 a.m. to 9:00 a.m. in the morning and 3:30 p.m. to 6:00 p.m. in the evening. The organization is located in several Baltimore County Elementary schools, and leasing space from them. They are licensed by the State of Maryland and the Maryland Department of Human Resources. Their non-profit status has been confirmed by the United States Internal Revenue Service. During the period from 9:00 a.m. to 3:30 p.m. the children leave the day-care area and proceed to their individual classrooms where they receive standard public school instruction. Before and after their regular classroom studies, they receive enrichment classes in the employer's organization. On June 14, 1991, the school year ended as did claimant's employment. She has reasonable reassurance of being re-employed once the school year recommences in September 1991.

CONCLUSIONS OF LAW

The provisions of Section 4(f)(3) and (4) of the Maryland employment Insurance Law, which deny unemployment insurance benefits to persons having reasonable assurance they will be re-employed by an educational institution after a period between two successive academic years is limited to these persons who perform such services for or on behalf of an educational institution. That is not the case here. Section 20(u) defines an educational institution as one in which the students are offered an organized course of study which are preparatory for gainful employment in a recognized occupation.

DECISION

The claimant is not a n employee of an educational institution within the meaning of Section 4(f)(3) or 4(f)(4) of the Maryland Unemployment Insurance Law. No disqualification will attach based upon her separation from Play Keeper's, Inc. The claimant may wish to consult the local office regarding the other eligibility requirements of the Law.

The determination of the Claims Examiner is hereby affirmed.

Henry M. Rutledge
Hearing Examiner

Date of Hearing: August 14, 1991
ke/Specialist ID: 01036
Cassette No : 01036
Copies mailed on August 29,1991 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)