



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DECISION NO.: 442-BR-82

DATE: April 16, 1982

APPEAL NO.: 25091

S. S. NO.:

CLAIMANT: Robert W. Miller, Jr.

EMPLOYER: William T. Burnette & Co., Inc.

L. O. NO.: 40

APPELLANT: CLAIMANT

ISSUE: Whether the Claimant's unemployment was due to leaving 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 MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

May 16, 1982

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

After reviewing the record in this case, the Board of Appeals disagrees with the facts found and the reasoning contained in the decision of the Appeals Referee. Under the circumstances, the decision of the Appeals Referee will be reversed.

The Board of Appeals finds that the Claimant informed his Employer that he could not report to work the next day, October 16, 1981, since he had to appear in court in Virginia. When he could not produce the summons on the spot, he was given the option of resigning or being fired. He chose to resign.

The Claimant did not have the requisite intent to quit his job, see, Allen v Core Target City Youth Program, 275 MD 69 (1975).

There is insufficient evidence that the Claimant committed any misconduct.

DECISION

The unemployment of the Claimant was due to a non-disqualifying reason within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is entitled to benefits from the week beginning October 11, 1981.

The decision of the Appeals Referee is reversed.


Associate Member


Associate Member

W:D
zvs

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
 1100 NORTH EUTAW STREET
 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS

JOHN J. KENT
 Chairman
 HENRY G. SPECTOR
 HAZEL A. WARNICK
 Associate Members

STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

SEVERN E. LANIER
 Appeals Counsel

- DECISION -

GARY SMITH
 Chief Hearings Officer

CLAIMANT: Robert Miller

DATE: Jan . 8, 1982

APPEAL NO.: 25091

S. S. NO.:

EMPLOYER: William T. Burnette & Co. Inc.

L. O. NO.: 40

APPELLANT: Claimant

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

NOTICE OF RIGHT OF FURTHER APPEAL

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AN SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, 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

Jan. 25, 1982

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present

Not Represented

FINDINGS OF FACT

The claimant had been employed by William T. Burnette & Company from September 1980 until October 15, 1981 as a material handler at a payrate of \$5.40 per hour.

The claimant had an attendance problem directly attributable to domestic problems. He had become separated from his wife and missed days for these personal reasons and due to appointments and at court. On or about October 2, 1981, the claimant was laid-off temporarily from William T. Burnette Company and recalled to work on October 8, 1981. During that interval, the

claimant had been in Virginia and had become involved in a legal matter wherein he was a prime state's witness in a criminal matter. The trial was scheduled for October 16, 1981, and, according to the claimant he was issued a summons to appear. On October 15, 1981, the claimant resorted for work but he was not permitted to work until he would see the general foreman. At that time, the claimant was given an ultimatum, either present proof of his court appearance at that moment, on the spot, or show up for work on October 16, or be discharged. The claimant was given another alternative that he could voluntarily submit his resignation. Rather than suffer a blemish on his work record with respect to prospective employers, the claimant voluntarily tendered his resignation. According to the claimant, he could have produced the Virginia summonses by the following day while he was gone from the area. The employer would not hear of it and offered him an alternative of quitting or being fired.

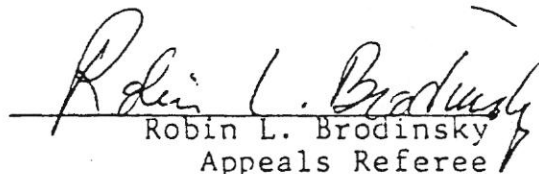
COMMENTS

The claimant left his job voluntarily for a cause not directly attributable to, arising from or connected with the conditions of employment or actions of the employer. The claimant had the alternative to protest and defend what amounts to a wrongful discharge. However, he chose to submit his resignation. The claimant was clearly in a dilemma in that he was under legal compulsion to appear as a state's witness in a criminal matter in the state of Virginia but he also was in a precarious position with the employer due to excessive absenteeism and was without the legal proof at the time that his presence in a Virginia court was being compelled. Although the claimant's separation was voluntary without good cause within the meaning of the Law, yet he has advanced "valid circumstances" which show a necessitous or compelling reason for leaving the job as he did and where he had no reasonable alternative but to do so. Therefore, it is concluded that the disqualification as imposed by the Claims Examiner must be reduced in accordance with the requirements of the Law.

DECISION

It is held that the claimant's unemployment was due to leaving work voluntarily, without good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits are denied for the week beginning October 11, 1981 and the five weeks immediately following.

The determination of the Claims Examiner is affirmed and modified accordingly.


Robin L. Brodinsky
Appeals Referee

Date of hearing: December 23, 1981

jlt

(10972--Bartenfelder)

Copies mailed to:

Claimant

Employer

Unemployment Insurance - Eastpoint