DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5032

—DECISION—

Decision No.: 472-BR-85

Date: July 18, 1985

Claimant: Karol E. McGuire

Appeal No.: 13974

S. S. No.:

Employer: Quince Orchard Shell

L.O. No.: 43

Appellant: CLAIMANT

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of §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 CIRCUIT COURT OF 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 August 17, 1985

— 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 Appeals Referee.

The two parties presented contradictory testimony concerning a conversation that took place between them on November 1, 1984. The claimant's version of events was that the employer entered the booth where she was working and stayed from 40 minutes to an hour. During this conversation, according to the claimant, the employer insisted that she sign a paper as a condition precedent to her continued employment. According to the claimant, the employer stated that the claimant would be fired if she did not sign this paper.

The provision of the paper to which the claimant objected was a provision that all cashiers must pay back all shortages which occur during their shift. The claimant testified that the employer first told her that signing the paper only indicated that she had read it but later indicated to her that signing it would mean that she agreed to it, i.e., the deduction from her check of any shortages that occur during her shift. The claimant testified that she especially objected to being asked to sign this paper since there was no opportunity given to cashiers to count the money at the end of their shift. She testified that she would have signed the paper had she had permission to count out. Later, however, the claimant testified that the employer, at the end of an hour's conversation, stated that they might be able to work something out about counting the money at the end of the shift, but the claimant's testimony was that the employer's suggestions were wholly inadequate, as it would require an extra hour per shift.

Regarding the conditions of employment, the claimant's testimony is that shortages had never been deducted from her or any other cashier's pay during the term of her employment.

The employer's testimony was that the claimant was not fired. The employer's testimony was that he was in the booth approximately only 15 to 20 minutes and that he was, during that time, importuning the claimant to sign the paper. At a certain point, the claimant simply stood up, punched out and quit. The employer's testimony concerning the already existing conditions of employment was different from that of the claimant. The employer testified that cashiers had always been responsible for their shortages. The employer also testified, however, that no shortages had been deducted from the claimant's pay in the past; nor did the employer specify any other cashiers from whom shortages had been deducted in the past.

The Appeals Referee found that both of these witnesses were credible and that he was faced with a "dilemma." The Appeals Referee then resolved this dilemma in favor of the employer on the issue of whether the claimant quit or was fired.

Parties whose testimony is contradictory cannot both be credible. Credibility includes not only honesty and truthfulness but also perception and memory. Clearly, one of the witnesses misperceived the meeting in question. Both witnesses' versions of the meeting cannot be credible. Both witnesses, however, may have been honestly attempting to tell the truth. This is what the Appeals Referee appears to have really meant.

The findings of fact with regard to the other relevant issues are unclear.

The Board of Appeals concludes that, if the Appeals Referee finds both parties to a conversation who give different testimony about that conversation to be equally truthful, the correct finding of fact is that there was a misunderstanding between the parties as to the content of the conversation. All the relevant facts must be weighed in order to determine the issue raised by the conversation. What is significant to the Board of Appeals is that the supervisor spent anywhere from 15 minutes to an hour with the claimant for the sole purpose of having her sign a simple one-page document. If signing the document was purely optional on the part of the claimant, the Board does not believe that the employer would have expended so much of his time and energy in getting the claimant to sign it. The only reasonable conclusion to be drawn from all these facts is that signing the document was a requirement of continued employment. Although the employer may not have told the claimant in so many words that she would be fired if she did not sign the document, the claimant's perception that it was a requirement of her continued employment and that she would be fired if she refused to sign it was perfectly reasonable and was, in fact, correct.

The Appeals Referee made no findings of fact on the conditions of employment prior to the time the document appeared. The testimony is clear. that, even though the employer may have, in his own mind, beleived that the policy was that cashiers pay back shortages, that was not, in fact, the policy of the employer. The claimant had had shortages which were not deducted from her paycheck. The same had happened to other employees. The employer pointed to no shortage that was ever deducted from anyone's paycheck prior to the appearance of this document. For this reason, the Board concludes that the-signing of the paper was a change in the conditions of employment.

The question then arises as to whether signing the document was a reasonable change in the conditions of employment. The Board concludes that it was not a reasonable change. Without strong evidence that there was no way in which a shortage could occur without it being the result of the cashier's negligence or dishonesty, an agreement that a cashier indemnify the employer

for shortages suffered on his or her shift is not reasonable. This is even more so in the case of a situation where the cashier is not allowed to count out the money at the end of his or her shift. It is true that the claimant admitted at one point the employer stated that something might be worked out about counting the money at the end of the shift. The claimant also stated, however, that the employer was continually changing the terms and conditions during this long conversation, and that no reasonable method of counting the money at the end of the shift had even been proposed.

The Board concludes that the claimant quit her job when she was reasonably convinced by circumstances that it was a requirement of her continued employment that she sign a paper agreeing to pay shortages back to the employer. From all of the testimony it is apparent that this was a requirement of her continued employment. The Board finds as a fact that the claimant continually refused to sign this agreement and that the employer discussed it with her at length and changed the requirement several times, but that the basic requirement was not changed and the employer had not agreed to any reasonable means of counting the money by the end of the long conversation. The Board concludes that the claimant was reasonable in determining that no progress had been made toward resolving the difficulties she would have with signing the paper, and she quit because she absolutely refused to sign the agreement.

The claimant voluntarily quit her job because she was dissatisfied with a substantial change in her working conditions exacted by her employer. The change was to the claimant's detriment. The change requested was unreasonable, as it required" the claimant to be monetarily responsible for monies that were not completely under her control.

DECISION

Under all these circumstances, the Board of Appeals concludes that the claimant voluntarily left her job, with good cause, within the meaning of $6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the claimant's reason for separation from Quince Orchard Shell. The claimant may contact the local office concerning the other eligibility requirements of the law.

The decision of the Appeals Referee is reversed.

Thomas W. Keech
Chairman

Associate Member

K:W
kmb

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CLAIMANT

EMPLOYER

Cathy Kelleher

UNEMPLOYMENT INSURANCE - WHEATON