Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033

— DECISION —

Decision No.: 576 -BR-88

Date: July 11, 1988

Claimant: Harvey Roffe

Appeal No.: 8802193

S. S. No.:

Employer: State of South Carolina
Wateroe River Correction
Institute

L.O. No.: 50

Appellant: CLAIMANT

Issue:

Whether the claimant left work voluntarily without good cause, within the meaning of Section 6(a) of the law; whether the claimant was discharged for gross misconduct, connected with his work, within the meaning of Section 6(b) of the law.

—NOTICE FRIGHT 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 10 , 1988

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the Hearing Examiner's finding of fact that the claimant's primary reason for quitting was that he expected to be terminated at the end of his probationary period.

Based upon this finding, the Board reverses the decision of the Hearing Examiner. It is true that a claimant who resigns in lieu of termination has not shown the intent to "voluntarily" leave work, within the meaning of Section 6(a). Miller v. William T. Burnett and Company (442-BR-82).

In this case, however, the claimant did not leave in lieu of termination. The term "in lieu of termination" indicates that the employee has no choice but to resign or be terminated by the employer. It should be distinguished from those cases when an employee resigns because he anticipates that the employer will terminate him but where the employer has not given him an ultimatum. This is such a case.

Where an employee quits because the employee fears that a discharge is imminent, but where he has not been informed that he is discharged, the resignation is without either good cause or valid circumstances. Stone v. Santoni's Market (531-BR-84).

DECISION

The claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning November 22, 1987 and until he becomes reemployed, earns at least ten times his weekly benefit amount ($1,950) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:DW
kbm
COPIES MAILED TO:

CLAIMANT
EMPLOYER
OUT-OF-STATE CLAIMS

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

--- DECISION ---

Date: Mailed May 10, 1988

Claimant: Harvey Roffe

Appeal No: 8802193

S.S. No.:

Employer: State of South Carolina
Wateroe River

L.O.No.: 50

Appellant: Employer

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 AND 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 May 25, 1988

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: Present

FOR THE EMPLOYER: M. Lawhorn

FINDINGS OF FACT

The Claimant was employed by the State of South Carolina from May 25, 1987 until November 23, 1987. He was a social worker earning $22,300 annually.

The Claimant was two days short of his six months probation period. As a social worker he had authority to direct and counsel prisoners.

The Claimant let a prisoner go to the parking lot with the keys of his car in order to obtain items from his car and return them to him. This was reported to prison authorities where he was working and was a direct violation of the prison policy. The Claimant attended a training school regarding the rules of the prison. As a result of this the Claimant was told in effect that he would be discharged at the end of his probation. The Claimant chose to resign instead.

The Claimant also stated that he was not paid for eighty hours of overtime.

The .-employer's regulations are to the effect that there is no compensation for overtime.

In addition the Claimant complained that he was counseled because he began to work at 7 a.m. whereas the normal time was 8 a.m.

The Claimant reported early in order to avoid traffic problems.

This concluded that the evidence on these two points will not be considered because it is found as a fact the primary reason that the Claimant left employment was to avoid facing a discharge for violation of prison policy regarding the fact that he permitted an inmate to go to his car with his keys.

CONCLUSIONS OF LAW

In the case of Miller v. William T. Burnett and Company, Inc.,442-BR-82, the Board of Appeals held that a Claimant who resigns in lieu of discharge does not show a reguisite intent to quit under Allen v. Target City Youth Program, 275-MD-69338 A.2D 237(1975), therefore resignation in lieu of discharge shall be treated as a termination under Section 6(b) or 6(c) of the Law.

It is found that the Claimant was discharged by the employer because of his permitting an inmate to go to his car with his keys on the parking lot. This was a deliberate and willful disregard of standards of behavior which the employer had a right to expect showing gross indifference to the employer's policy and a willful violation of the employer's work rules. This must be considered to be a discharge for gross misconduct connected with the work within the provisions of Section 6(b) of the Law. The determination of the Claims Examiner will be reversed.

DECISION

The Claimant was discharged for gross misconduct connected with the work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning November 22, 1987 and until he becomes re-employed and earns at least ten times his weekly benefit amount $1950 and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.

John F. Kennedy, Jr.
Hearing Examiner

Date of Hearing: April 8, 1988
Cassette: 2008, 2006
Specialist ID: 50524
Copies Mailed on May 10, 1988 to:
Claimant
Employer
Out-of-State Claims (MABS)