



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.:	659-BR-90
	Date:	July 3, 1990
Claimant: Samuel P. Abate	Appeal No.:	9000312
	S. S. No.:	
Employer: Russoli Temps	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 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 MAYBE 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.

August 2, 1990

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

— 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.

The Board adopts the findings of fact of the Hearing Examiner with respect to the dates the claimant was given assignments with Russoli Temps and the job duties and pay at each assignment. The Board also adopts the Hearing Examiner's finding of fact that the claimant was offered an assignment on November 27, 1989 at Scranton Lithograph.

The Board, however, disagrees with the Hearing Examiner's conclusions of law. one of the most important legal issues in this case is whether the claimant voluntarily quit, within the meaning of Section 6(a) of the law, or whether he refused suitable work within the meaning of Section 6(d) of the law.

It is sometimes difficult to determine, in a case involving a temporary agency as employer, which section of the law to apply when a claimant has refused a particular assignment. A claimant cannot be said to "quit" his employment unless he is, in fact, employed; and, for the purposes of the Maryland Unemployment Insurance Law, a person is not employed unless he is, for any specific week, performing services for which wages are payable. In other words, a person is not considered employed simply because his name is registered with one or more temporary employment agencies. If that registration is his only connection with that employment agency, there is no employment, and a person cannot quit.

If a claimant, however, has been working for a substantial length of time, and virtually continuously, for a temporary agency, on a single assignment, or in a series of virtually uninterrupted assignments, the refusal of the next following assignment should be considered a voluntary quit, and the case decided under Section 6(a) of the law.

If a claimant has been working for a short time, or only sporadically, for this agency, the completion of a specific assignment ends the employment relationship, and a refusal of another offer of work should be considered a "refusal of work" under Section 6(d) of the law.

The claimant in this case obtained assignments for the following dates from Russoli Temps: from May 3 to August 25, from September 8 through September 17, from September 26 through September 27 and from October 9 through November 17.

The Board concludes that the claimant was not working continuously, or in a series of virtually uninterrupted assignments for Russoli Temps. Therefore, he cannot be said to have been employed by Russoli Temps on November 27, 1989. His refusal of an assignment on that day was thus not a voluntary quit within the meaning of Section 6(a) of the law.

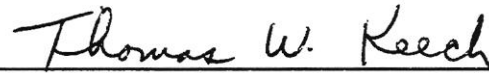
The claimant's refusal of the assignment should be considered under Section 6(d) of the law as a possible refusal of suitable work. The Board finds as a fact that the claimant was in claim status at the time of this refusal; thus, a penalty under Section 6(d) can be applied, if applicable.


The Board concludes that the claimant's refusal of the assignment to Scranton Lithograph was a refusal of suitable work within the meaning of Section 6(d) of the law. The reason for the refusal was the claimant's dissatisfaction with the short-term nature of the assignments previously given him by Russoli Temps. These assignments had ranged from 6 hours to 14 weeks. The Board concludes that this dissatisfaction does not amount to "good cause" for refusing this work, but that it is a sufficient factor to justify the use of the minimum penalty.

DECISION

The claimant did not voluntarily quit his employment, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. The claimant refused, without good cause, suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning November 26, 1989 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member

K:DW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Samuel P. Abate
50 Bolin Street
Pittston, PA 18640

OUT-OF-STATE CLAIMS

 **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: 5/09/90

Claimant:

Samuel P. Abate

Appeal No.:

9000312

S. S. No.:

Employer:

Russoli Temps

LO. No.:

50

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 there is good cause to reopen this dismissed case, within the meaning of COMAR 24.02.06.02(N).

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAYBE 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 FURTHER APPEAL EXPIRES AT MIDNIGHT ON

May 24, 1990

— A P P E A R A N C E S —

FOR THE CLAIMANT:

Claimant-Present by Telephone

FOR THE EMPLOYER:

Carol Haines,
Manager-Present by
Telephone

PREAMBLE

The claimant filed an appeal from a Decision dated January 26, 1990, wherein the Hearing Examiner ruled that the claimant failed, without good cause, to accept suitable work, within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. The Board of Appeals, on March 16, 1990, remanded the case to the Appeals Division for a de novo hearing.

FINDINGS OF FACT

A telephonic appeal hearing was scheduled for the claimant and Russoli Temps on April 3, 1990 at 9:45 a.m. The claimant was not present for the telephonic hearing scheduled for April 3, 1990; therefore, the case was dismissed on the record. The claimant was not present for the telephone hearings scheduled for April 3, 1990 because he was in the state of North Carolina visiting his sister who was sick. The claimant attempted to contact the Department of Economic and Employment Development on March 27, and March 28, 1990 to inform the State of Maryland that he would be unable to be present for the telephone hearing scheduled for April 3, 1990; however, the claimant was unable to reach a representative from the State of Maryland over the telephone.

The claimant had been employed by Russoli Temps from March 13, 1989 to November 27, 1989. Russoli Temps sent the claimant on a job at Midway Tool Company from May 3, 1989 to August 25, 1989 as a laborer earning \$6.00 per hour. Further, Russoli Temps sent the claimant on a job working at K-Mart Corporation from September 8, 1989 to September 17, 1989 as a laborer earning \$5.40 per hour. Also, Russoli Temps sent the claimant on a job at Warner Brothers Specialty Records from September 26, 1989 to September 27, 1989 as a laborer earning \$5.40 per hour.

The claimant had been sent by Russoli Temps to work at Bertals Can Company from October 9, 1989 to November 17, 1989 as a laborer earning \$5.00 per hour. The claimant is no longer working for the assignment at Bertals Can Company because the job assignment had been completed. On November 27, 1989 Russoli Temps concluded the claimant was offered a position take an assignment at Scranton Lithograph for a position of an indefinite duration as a laborer earning \$5.50 per hour; Russoli Temps concluded the claimant refused to accept the position at Scranton Lithograph. The claimant concluded that he was not offered an assignment on November 27, 1989 for a position at Scranton Lithograph. The Hearing Examiner finds as a fact that Russoli Temps offered the claimant a position on November 27, 1989 to work at Scranton Lithograph for an indefinite duration for which the claimant refused. The claimant had been dissatisfied with Russoli Temps because the company had sent him on a job at Warner Brothers which lasted only six hours and assignments at K-Mart and Bertals Can Company which lasted a short duration. The Hearing Examiner finds as a fact that the claimant's refusing to accept the assignment on November 27, 1989, to work at Scranton Lithograph, constitutes a voluntary quit, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

CONCLUSIONS OF LAW

Since the claimant did not appear for the hearing scheduled on April 3, 1990 because the claimant was in the State of North

Caroline because his sister was ill, it will be held that there is good cause to reopen the dismissed case under the COMAR 24.02.06.02(N).

Article 95A, Section 6(a) provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause or valid circumstances, within the meaning of Section 6(a) of the Law.

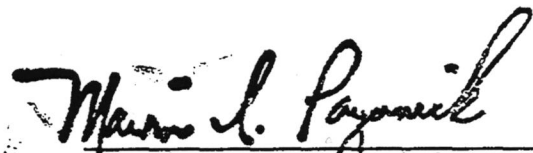
The claimant's conduct on November 27, 1989, by refusing to accept a job to work at Scranton Lithograph for a position as a laborer earning \$5.50 per hour, constitutes a voluntary quit, without good cause, within the meaning of Section 6(a) of the Law. The determination of the Claims Examiner that the claimant failed to accept suitable work under Section 6(d) of the Law will be reversed.

DECISION

It is held that there is good cause to reopen the dismissed case under the COMAR 24.02.06.02(N).

The unemployment of the claimant 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 November 26, 1989 and until the claimant becomes re-employed and earns (\$760.00) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is reversed.



Marvin I. Pazernick
Hearing Examiner

Date of Hearing: 4/26/90
alma/Specialist ID: 50524
Cassette No: 3491 A & B
Copies mailed on 5/09/90 to:

Claimant
Employer
Out-of-State Claims - (MABS)
Board of Appeals - Room 515