



STATE OF MARYLAND
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DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION
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BOARD OF APPEALS
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Associate Members
SEVERN E. LANIER
Appeals Counsel

—DECISION—

	DECISION NO.:	726-SE-83
	DATE:	June 16, 1983
CLAIMANT: Denny L. Dunbar	APPEAL NO.:	05664
	S.S.NO.:	
EMPLOYER: St. Charles Fitness Center	LO. NO.:	20
	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 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

July 16, 1983

- APPEARANCE -

FOR THE CLAIMANT:

Denny L. Dunbar - Present

FOR THE EMPLOYER:

Peter Lumia -
President

EVIDENCE CONSIDERED

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 into this case, as well as the Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was employed by St. Charles Fitness Center in November, 1981. His position was massage therapist and he was earning \$4.50 per hour at the time he voluntarily left his employment on March 8, 1982.

The Employer asked the claimant if he wanted to take on a special job outside of his regular work duties. The job involved putting down safety stripping. The claimant was to perform this work duty during the evening hours after his regular job duties were completed. The claimant was to keep a record of the extra time worked by punching the additional hours on the time clock. He was to be paid on an hourly basis.

The claimant agreed to do the extra work and was under the impression that the extra work would be paid as overtime, since it was in addition to his regular work and was being performed for the same employer by him in the evening hours. He understood that he would be paid time and a half for each hour he worked at the job of putting down safety stripping. The employer intended to pay straight time on an hourly basis. A dispute arose between the claimant and the employer as to how much the claimant would be paid. The claimant contended he should be paid for 122 hours computed on the basis of time and a half and the employer maintained the claimant had punched time on the time cards which amounted to 56 hours on a straight time basis.

The difference in the amount of pay due the claimant could not be resolved, so the claimant quit his employment.

Subsequent to his quit, the claimant sued the employer civilly for wages due. The court decision was in favor of the employer. The claimant did not appeal this adverse decision.

CONCLUSIONS OF LAW

It is undisputed that the claimant in this case voluntarily quit his job because he was not paid overtime wages to which he felt he was entitled. The claimant clearly believed that he was entitled to overtime pay because of the number of hours he worked, despite the fact that he was performing a different task during the overtime hours.

There was no evidence concerning the exact statutory grounds upon which the claimant sued the employer in state court, nor is there any evidence of the grounds on which the case was decided. Since there is no evidence that the state court was presented with, or ruled upon, all possible issues relating to the overtime claim, the Board" is not precluded from reaching these issues.

The Board concludes that the claimant was right in his contention that overtime rates are payable for work performed above the maximum workweek, irrespective of whether the Claimant was performing a different task on the overtime hours.

In its interpretation of the federal Fair Labor Standards Act, the U. S. Department of Labor has addressed this issue specifically:

In any workweek an employee is covered by the Act and is not exempt from its overtime pay requirements, the employer must total all the hours worked by the employee for him in that workweek (even though two or more unrelated job assignments may have been performed), and pay overtime compensation for each hour worked in excess of the maximum hours applicable under section 7(a) of the Act.

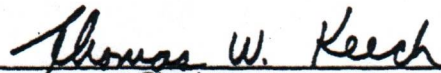
29 C.F.R. 5778.103 [emphasis supplied]

Since the claimant's contention that he was due additional money for overtime was essentially correct, and since his employer refused to pay any overtime, the claimant's voluntary quitting of his job will be held to be for good cause within the meaning of §6(a) of the Law.

DECISION

The claimant voluntarily quit his job, but for good cause, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. No penalty is imposed based on his separation from work with St. Charles Fitness Center.

The decision of the Appeals Referee is affirmed.


Chairman


Associate Member

K:W

kmb

DATE OF HEARING: March 18, 1983

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CLAIMANT

EMPLOYER

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