Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

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

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Decision No.: 889-BR-87

Date: Dec. 18 , 1987

Claimant: Sanford Hiken

Appeal No.: 8708225

S. S. No.:

Employer: Milton Samuelson

L.O. No.: 1

Appellant: CLAIMANT

Issue: Whether the claimant was able to work, available for work and actively seeking work within the meaning of Section 4(c) 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 ON January 17 , 1988

— 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 claimant was employed by Milton Samuelson from September of 1980 until August of 1982, at which point he quit his job. He was rehired in September of 1982 and continued in employment until October 11, 1986. On the latter date, he began another full-time job.

After the claimant took the other full-time job, he continued to work on Saturdays for Milton Samuelson. He earned $42.50 for each Saturday.

The claimant lost his full-time job and continued to work on Saturdays for this employer and to collect partial unemployment insurance benefits.

The employer became aware that the claimant was drawing partial unemployment benefits. On March 14, 1987, just as the store was about to close on the day before the employer went on a week's vacation, the claimant and the employer had a vague conversation concerning the claimant coming back to work for the employer for additional hours. A return to the claimant's exact former job was not even contemplated.

It was decided that the discussion would be continued in the following week, but it was not continued. The claimant believed that the employer did not really want him to work for him full time, but the employer believed that the claimant was not really interested in working for him full time. AS a result, neither party resumed the discussion when the employer returned from vacation.

CONCLUSIONS OF LAW

The Board concludes that the claimant did not refuse suitable work within the meaning of Section 6(d) of the law. The Board has repeatedly held that Section 6(d) of the law applies only to bona fide and definite offers of employment. Normally, such a specific and bona fide offer would include at least a definite salary or other method of payment and a definite starting date. Neither was present in this case.

Refusal to return to one's own job, when it is offered, would clearly be a reason for disqualification under Section 6(d) of the law. There must be evidence, however, that a specific job was offered. Adams, et. al. v. Cambridge Wire Cloth, 515 A.2d 492, 497 (1986).

Since there was no offer of a specific job, the claimant cannot be disqualified under Section 6(d) of the law for failure to accept it.

The Hearing Examiner recognized this principle and disqualified the claimant instead under Section 4(c) of the law for failing to actively seek work within the meaning of that section. The disqualification was imposed beginning March 14, 1987 and continuing throughout the claimant's claim period. The failure to seek work at one particular location can be evidence that a claimant is not actively seeking work within the meaning of Section 4(c) of the law. It is not, however, sufficient evidence to impose an automatic disqualification under Section 4(c), especially where there is no evidence of any specific job offer from that one employer. All of the claimant's work-seeking activities should be considered.

In this case, the claimant showed that he was actively seeking work elsewhere, and the failure to take the initiative to follow up the conversation of March 14 should not disqualify him for his entire claim period. When the employer returned from vacation, sometime between March 22 and March 28, the claimant failed to actively pursue this employment possibility. The claimant will, therefore, be disqualified for failing to actively seek work for the week ending March 28.

The actual reason that the claimant did not do so was a general feeling shared by both the employer and the claimant that the other party was not really interested in renewing the employment relationship on a more substantial basis. Considering these beliefs, the Board does not conclude that it would be appropriate to penalize the claimant for more than a one-week period, based upon his lack of initiative. To penalize the claimant more than this would be unfair, especially considering the misunderstandings between the parties and also the fact that the employer never did have actual full-time work available for the claimant.

DECISION

The claimant was not meeting the requirements of Section 4(c) of the Maryland Unemployment Insurance Law for the week ending March 28, 1987. Other than this period, no disqualification is imposed under Section 4(c) of the law for failure to work more hours with Milton Samuelson.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Associate Member

K:W
kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Douglas Koteen, Esq.

UNEMPLOYMENT INSURANCE - BALTIMORE

DEPARTMENT OF EMPLOYMENT AND TRAINING
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STATE OF MARYLAND
William Donald Schaefer
Governor

BOARD OF APPEALS
THOMAS W KEECH
Chairman
HAZEL A WARNICK
Associate Member
SEVERN E. LANIER
Appeals Counsel
MARK R WOLF
Chief Hearing Examiner

—DECISION—

Date: Mailed 9/14/87

Claimant: S. T. Hiken

Appeal No.: 8708225

S. S. No.:

Employer: Milton Samuelson

LO. No.: 01

Appellant: EMPLOYER

Issue: Whether the claimant was able, available and actively seeking work within the meaning of Section 4 (c) 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON September 29, 1987

— APPEARANCES —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by Douglas E. Koteen, Esquire; and Milton Samuelson, Vice President

FINDINGS OF FACT

The claimant was employed by Milton Samuelson from September, 1980, when he was hired as a clerk, salesman until August, 1982, when he quit his job. He was rehired in September, 1982. The claimant continued in employment until October 11, 1986, when he gave notice that he had another job. The job that he was taking was a five-day week job and he asked if he could work on Saturdays for the present employer, and received permission to do

so and is currently working on Saturdays only, earning $42.50 for that one day's work.

The claimant has been filing claims for partial unemployment benefits. The employer has been receiving notices in the mail or have questioned them on the hours worked by the claimant, has reported him working on Saturdays and has reported that other work was available for him.

The claimant had left this employer to go to work with A T & T and is no longer employed by AT & T. He has been unemployed and working only on Saturdays. On March 14, 1987, the claimant had a conversation with his employer and the employer told the claimant that he could return to work with the employer. The claimant, instead of accepting the offer, told the employer that he wanted to talk about it when the employer returned from a week's vacation. The claimant, thereafter, never brought it up with the employer, and the employer never brought it up with the claimant. The claimant was not scheduled for any additional hours to work. after that time, even though the employer was receiving notices in the mail when the claimant was filing for partial unemployment insurance benefits.

The claimant did not immediately accept return to work again with this employer on March 14, 1987, because he was not sure he wanted to continue working for this employer. The employer, at that time and at the present time, did not have full-time work for the claimant, but states now that there was part-time work available for him had he requested it.

CONCLUSIONS OF LAW

On March 14, 1987, the employer in this case made it clear to the claimant that there would be additional work available for him on the employer-s premises when it told him that he could return to work with the employer. Thereafter, the claimant, however, instead of accepting the offer at that time, enterposed an objection stating that he would discuss it when the employer returned from vacation.

Thereafter, the claimant never brought the subject up again. The employer was justified concluding that the claimant did not wish to work with him, since the employer had told the claimant specifically on March 14, 1987 that he could return to work with this employer.

In order to be eligible for partial unemployment insurance benefits, the claimant must show that he is able to work,

available for work and actively seeking work. The claimant, in this case, has not shown that. The nearest effort on his part could have increased the number of hours he was working. He did not put forth that effort.

DECISION

The claimant was not able to work, available for work and actively seeking work as required by Section 4 (c) of the Law. Benefits are denied for the week beginning March 15, 1987 and until he is meeting all of the requirements of the Law.

The determination of the Claims Examiner is reversed.

Martin A. Ferris
HEARING EXAMINER

DATE OF HEARING - 9/1/87
cd
5177/James

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Claimant
Employer
Unemployment Insurance - Baltimore - (MABS)

Douglas E. Koteen, Esquire