



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

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MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 965-BR-85

Date: October 25, 1985

Claimant: Tanya Nelson

Appeal No.: 13872

S. S. No.:

Employer: Annapolis Housing Authority
ATTN: David Boyd
Acting Pers. Dir.

L.O. No.: 8

Appellant: EMPLOYER

Issue:

Whether the claimant was discharged for misconduct, connected with her work, within the meaning of §6(c) of the law; and whether the unemployment of the claimant was due to leaving 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 November 24, 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 Hearing Examiner.

The first important issue in this case is whether the claimant voluntarily quit her job or whether she was discharged. In this case, the claimant sent a letter to the employer which the employer considered to be a resignation. The letter listed a number of detailed duties which the claimant performed and stated that she did not consider them to be within her job description. The letter concluded: "If this situation continues, I will have no other alternative but to resign my position as Section 8 Counselor in the near future. I am, however, willing to discuss my feelings to resolve this matter."

The employer responded with a long memorandum to the claimant. This memorandum stated that a teamwork attitude was mandatory within the office and that the letter received from the claimant did not show this attitude and was possibly insubordinate. The letter specifically stated that all of the duties the claimant objected to were contained within her job description and that none of the duties assigned to her were unfair. That letter concluded: "Since . . . all of the various assigned duties will continue to be considered part of the work load of your position, I must accept your letter as your resignation effective 5:00 p.m. today, October 26, 1984. If you have any questions or comments, you may contact me today or discuss them with our Acting Personnel Director, Mr. Boyd."

Mr. Boyd hand-delivered the claimant this memorandum shortly before the end of work on October 26th. Mr. Boyd specifically asked the claimant if she desired to speak to the Executive Director or him about the matter, but the claimant replied in the negative. The claimant then left the office.

The Board concludes that, under all of the circumstances in this case, the claimant voluntarily resigned her employment. The claimant sent a letter to the Executive Director stating in effect that she was going to resign if her duties were not changed. She stated that she was willing to discuss her feelings in order to resolve the matter. This was an utterly presumptuous letter, since it stated in effect that the claimant was resigning but that the employer would be given the opportunity to discuss the matter with her. If an employee is dissatisfied with any assigned job duties, of course, it is incumbent upon the employee to bring the matter to the attention of the employer. A letter stating that the claimant is resigning but that the employer may discuss the employee's feelings with her is an effective resignation, since it is not an employer's duty to seek an employee out and solicit her feelings.

The employer's letter was reasonable in taking at face value the claimant's resignation. The employer's letter clearly set out the facts that the claimant's duties were within her job description and were not going to change. Since the claimant had made

clear that this would bring about her resignation, the employer very reasonably then accepted her resignation. The employer's letter concluded, however, with an offer to the claimant to discuss the matter with the Director of Personnel or with the Executive Director himself.

The employer's letter correctly set the matter in perspective. The claimant had sent a letter stating she was resigning unless her job duties were drastically changed, but that the employer would be allowed to meet with her to discuss her feelings. The employer's response stated that the duties could not change and that her resignation was therefore accepted, but it also gave the claimant a last opportunity to clarify whether or not she was resigning her position or was willing to accept the duties assigned. When the claimant failed to take advantage of this opportunity and indicated that she did not wish to speak to the Executive Director, any ambiguities about her intent to resign were cleared up. Having been given a second chance to retract or clarify her resignation, the claimant explicitly stated that she did not wish to do so and left the office.

The claimant did send a letter of resignation, and when it was accepted as a letter of resignation, she declined to meet with the employer and merely left the premises. Under all of these circumstances, the claimant clearly voluntarily left her job within the meaning of §6(a) of the law.


The second issue in this case is whether the claimant had good cause or valid circumstances for having voluntarily left her employment. The testimony of the Personnel Director, and the memorandum from the Executive Director, indicate that the claimant's job duties were explained to her when she was first hired. When there is an allegation that job duties are substantially different than the job promised at the time of hire, the burden is on the claimant to show that this is the case. The claimant has failed to meet this burden. Although she listed a number of specific tasks which she did not believe that she should be performing, there was no indication of why these tasks could not be subsumed under her job category. The employer's testimony is strongly to the effect that the claimant was explicitly told that these types of duties would be assigned to her, and the description of job duties makes it clear that there would be other types of duties expected of a counselor. For all of these reasons, the Board does not feel that the claimant has met her burden of showing that there was a substantial change in her job duties from the duties originally described to her at the time of hire. For this reason, the Board will conclude that a change in job duties will neither qualify as "good cause" or "valid circumstances" as those terms are used in §6(a) of the law.

The employer did admit that a heavy workload had fallen upon the claimant. A heavy workload, of course, falls upon all employees at various times. There was no showing, however, that the claimant suffered medical injury as a result of these duties. There was also no showing that the claimant worked overtime or at home or did any other concrete act which specifically would indicate that a person was being assigned too many duties. There was no indication that the claimant had been officially reprimanded for failing to perform any part of her duties. The burden was on the claimant to provide evidence on all of these issues, and without evidence of any huge increase in the amount of work to the point where the claimant's personal life was being infringed upon or she was being criticized unfairly by her employer for not completing the amount of work, the mere fact that there was a lot of work to do will not be considered either a good cause or a valid circumstance.

DECISION

The claimant voluntarily left her job, without good cause, within the meaning of §6(a) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits for the week beginning October 28, 1984 and until she becomes re-employed, earns ten times her weekly benefit amount (\$640) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.



Chairman



Associate Member

K:W

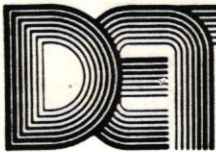
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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - ANNAPOLIS



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1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

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Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Date: Mailed: Jan. 7, 1985

Claimant: Tanya M. Nelson

Appeal No.: 13872-EP

S. S. No.:

Employer: Annapolis Housing Authority

L.O. No.: 8

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with her work within the meaning of Section 6(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 January 22, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Tanya M. Nelson - Claimant

David Boyd - Acting
Personnel Director

FINDINGS OF FACT

The claimant has a benefit year effective October 28, 1984. Her weekly benefit amount is \$64.00. The claimant was employed with the Annapolis Housing Authority of Annapolis, Maryland on May 28, 1984. She was performing duties as a Section 8 Counsellor at \$5.41 per hour at the time of her discharge on October 26, 1984. The claimant has remained unemployed from October 26, 1984 to the present.

The testimony reveals that the claimant was discharged from her employment for insubordination. On October 25, 1984, after going to her supervisor and then to the Personnel Director without satisfaction, the claimant wrote a letter to the Executive Director. In this letter, she indicated that she was being assigned various duties not pertaining to her job description, and thereby, she was not being able to perform the duties for which she was hired. In this letter, she indicated that she would be willing to discuss her feelings to resolve the matter, but if there were no other alternatives, she would have to resign her position.

The Executive Director responded to her letter by indicating that he was accepting her resignation and also that her going directly to him was an act of insubordination. The claimant never intended to resign, but simply wanted to point out to the Executive Director that she was being overworked and was not being able to perform the duties for which she was hired. There was an extremely heavy workload and there was actually no supervisor above the claimant. The supervisor above the claimant was not knowledgeable and it was the claimant who was training her. She had gone through the channels, but was not able to obtain any results, thus, the letter to the Executive Director. Instead of discussing this with the claimant, the Executive Director chose to terminate the claimant by accepting the letter as a letter of resignation. However, it was not the claimant's intention to resign.

CONCLUSIONS OF LAW

It is concluded from the testimony that the claimant did not voluntarily quit her employment, but was discharged. The claimant wrote a letter to the Executive Director, asking for help with the workload and also trying to get a chance to discuss the matter with him. Instead of discussing it with the claimant, the Executive Director termed her letter as insubordination in that she did not follow channels, although she actually did, but there was never any intent to quit on the part of the claimant. It is, therefore, concluded that the claimant was discharged, but there is no finding of misconduct, and the determination of the Claims Examiner will be affirmed.

DECISION

The claimant was discharged, but not for misconduct connected with her work within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. There will be no disqualification

imposed based on her separation from her employment with the Annapolis Housing Authority. The claimant may contact the Local Office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner under Section 6(c) of the Law is affirmed.

The Employer's Protest is denied.



William R. Merriman
Appeals Referee

Date of hearing: 1/2/85
Amp/0099
(Cutler)
9273

Copies mailed on January 7, 1985 to:

Claimant
Employer
Unemployment insurance - Annapolis