

\*CORRECTED DECISION - NOTE CORRECTION

IN CLAIMANT'S ADDRESS. kbm, 11/1/88

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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



William Donald Schaefer, Governor  
J. Randall Evans, Secretary

BOARD OF APPEALS

Thomas W. Keech, Chairman  
Hazel A. Warnick, Associate Member  
Donna P. Watts, Associate Member

— DECISION —

Decision No.:	996-BH-88
Date:	Oct. 27, 1988
Claimant:	Tracy Crist
Appeal No.:	8805193 & 8805194
S. S. No.:	
Employer:	Contemporary Accounting Service Co.
L. O. No.:	7
Appellant:	CLAIMANT

Issue:

Whether the claimant was discharged for misconduct, connected with her work, within the meaning of Section 6(c) 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 MAY BE 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON

November 26, 1988

— APPEARANCES —

FOR THE CLAIMANT:

Tracy Crist, Claimant

FOR THE EMPLOYER:

Employer not  
represented

## EVALUATION OF EVIDENCE

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 in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

The Board has carefully reviewed the testimony presented before the Hearing Examiner by both parties, as well as the testimony presented before the Board of Appeals by the claimant. The employer's testimony was that the claimant's attitude had become bad and that the number of errors in her work had greatly increased and that she was generally uncooperative. Hearsay testimony was produced that the claimant's immediate supervisor felt that he could no longer work with her. The claimant's testimony was that she did her best at all times. The Board is influenced by the fact that the claimant had been employed for three years and was apparently doing very well, having been given a number of raises, up until shortly before the end of her employment. The claimant's testimony was that it was the employer's attitude, not the claimant's attitude, which changed and also that the employers change in attitude coincided with her announcement to the employer that she had become pregnant. In evaluating this testimony, the Board has also taken into consideration the fact that the employer offered the claimant her job back (conditionally) after it learned that the claimant was applying for unemployment insurance benefits.

## FINDINGS OF FACT

The claimant was employed from February of 1985 until April 4, 1988 doing general accounting work for the employer. The claimant was given a number of raises during her tenure of employment, and her responsibilities increased, as she was learning a number of tax functions during her course of employment.

Towards the end of her period of employment, the claimant's functions, other than specific functions performed during a busy tax season, consisted in great part of operating the office's computer. In the beginning of 1988, the claimant announced to the employer that she was pregnant. Shortly thereafter, the claimant was moved to another office and a new employee was hired and trained to operate the computer. (This was tax season, and the claimant was temporarily involved in doing tax work.)

The claimant was dismayed that it appeared that her job was being phased out. She did not, however, change her attitude, and she continued to work to the best of her ability. Because she was no longer allowed to proofread her work, her errors did increase, but this would not have occurred if the previous procedure had been retained. With the exception of those changes in her work product directly brought about by the change in her employer's procedures, the claimant's work continued at approximately the same level of proficiency.

On April 4, 1988, the employer fired the claimant for an alleged bad attitude and an increased number of errors in her work. The claimant did not have a bad attitude, and the increases in the errors in her work were only those described above. The claimant was performing the job to the best of her ability at the time that she was discharged.

On April 22, 1988, the employer wrote a letter to the claimant, offering her her job back conditioned upon the fact that her attitude would change. The claimant did not respond to this letter.

#### CONCLUSIONS OF LAW

In a misconduct case under Section 6(b) or (c) of the law, the burden is on the employer to show that the claimant has committed the misconduct for which he or she was discharged. The employer has failed to do so in this case. The employer's allegations of misconduct were vague and unspecific and were more than sufficiently refuted by the claimant's testimony in this case, which the Board found to be credible.

The Board also concludes under Section 6(d) of the law that the claimant was not offered suitable work within the meaning of that section. The offer of work made was conditional, i.e., conditioned upon the claimant changing her attitude. Given the findings made above by the Board that the claimant's attitude was satisfactory at all times, the Board does not consider this to have been an offer made in good faith. For this reason, there was no good faith offer of employment within the meaning of Section 6(d) of the law. The penalty imposed under Section 6(d) of the law will therefore be reversed.

The Board notes that, even if there had been a good faith offer of reemployment, a question would arise as to the suitability of the employment, since the claimant had been discharged just previously for no good work-related reason. The Board does not have to reach this issue, however, since it

has determined already that the offer itself was not made in good faith.

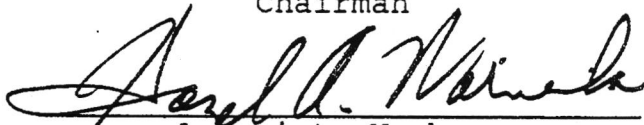
DECISION

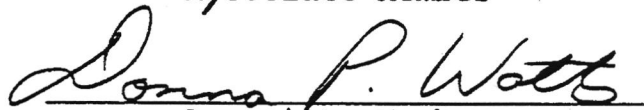
The claimant was discharged, "but not for any misconduct within the meaning of Section 6(b) or (c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon the reason for her separation from Contemporary Accounting Service Company.

The claimant was not offered suitable work within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon her not responding to her employer's letter of April 22, 1988.

The decision of the Hearing Examiner is reversed.

  
Chairman

  
Associate Member

  
Associate Member

K:W:W

kbm

Date of Hearing: October 4, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

# Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

1100 North Eutaw Street  
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**BOARD OF APPEALS**

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**— DECISION —**

Decision No.: 996-BH-88

Date: Oct. 27, 1988

Claimant: Tracy Crist

Appeal No.: 8805193 &  
8805194

S. S. No.:

Employer: Contemporary Accounting  
Service Co.

L. O. No.: 7

Appellant: CLAIMANT

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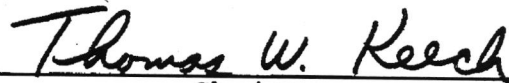
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DECISION

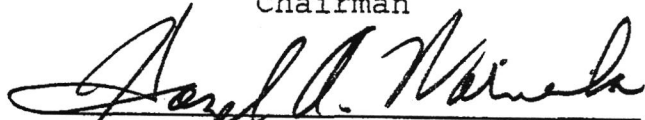
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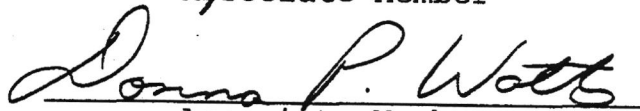
The decision of the Hearing Examiner is reversed.



Chairman



Associate Member



Associate Member

K:W:W

kbm

Date of Hearing: October 4, 1988

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK



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: 6/9/88

Claimant: Tracy L. Crist

Appeal No: 8805193-EP

S.S. No:

Employer: Contemporary Accounting Service

L.O. No.: 7

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Law.

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-- 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

NOTICE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE 6/24/88 U.S. POSTAL SERVICE POSTMARK.

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— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Mary M. Salloom,  
President

FINDINGS OF FACT

The claimant began employment in February 1985 and at the time of separation was performing general ledger work for an accounting firm, tax work, client "daily work" and preparation of corporate tax forms. The claimant last worked on April 4, 1988, and was separated through discharge.

The record shows that the claimant was hired without prior training or experience and was trained at the employer's expense and on the employer's time. The record shows that the employer was initially satisfied with the claimant's job performance and

in the course of her three years of employment the claimant had received seven raises, going from \$5 an hour to \$8 per hour.

The employer noted a decline in the claimant's work quality and attitude. Tax forms were not being completed properly and work had to be done by other personnel. It also came to the employer's intention that co-workers were complaining of the claimant's negative attitude and the claimant's direct supervisor discussed with the employer that he "could not work with the claimant. Another factor contributing to the claimant's discharge was that it was the claimant's duty to turn over "daily work" promptly to her supervisor. Daily work consisted of communications involving accounting matters sent to the employer's clients and forwarded to the employer. Despite representations to the employer that such work was properly dealt with, the employer discovered a file of unprocessed daily work and tardy attention to such work contributed to the detriment of the employer in the eyes of its clients.

The employer had valued the claimant's services, but the work quality had declined to such a point where the claimant was discharged at the height of tax season.

#### CONCLUSIONS OF LAW

The term "misconduct" as used in the Statute, means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment, or on the employer's premises. The evidence in the instant case, demonstrates initial substantial satisfaction with the claimant's discharge of her duties. This is clearly reflected in the fact that the claimant's training continued and she continued to receive raises and increases in responsibilities. However, the evidence shows that there came a time when the claimant failed to perform work in an acceptable manner and continued to do so after counseling at which the employer's dissatisfaction was made known to the claimant. The claimant's employment at that time was so characterized by a negative and friction causing attitude which contributed to the employer's decision to discharge her.

Within the definition as cited above, it must be held that the claimant's discharge from the employment was for a reason of misconduct within the meaning of Section 6(c) of the Law.

DECISION

It is held that the claimant was discharged for misconduct connected with the work, within the meaning of Section 6(c) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of unemployment insurance benefits for the week beginning April 3, 1988 and for the nine weeks immediately following.

The determination of the Claims Examiner made under Section 6(c) is reversed.



Louis Wm. Steinwedel  
Louis Wm. Steinwedel  
Hearing Examiner

Date of hearing: 6/7/88

rc

(3455)-Specialist ID: 07205

Copies mailed on 6/9/88 to:

Claimant

Employer

Unemployment Insurance - College Park - MABS

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: 6/9/88

Claimant: Tracy L. Crist

Appeal No: 8805194-EP

S.S. No.:

Employer: Contemporary Accounting Service

L.O. No.: 7

Appellant: Employer

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.

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--- APPEARANCES ---

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Mary L. Salloom,  
President

FINDINGS OF FACT

The claimant was separated from her employment under circumstances considered in Appeal No: 8805193, to which this case is cross referenced.

Following the claimant's discharge from the employment, on April 4, 1988, the employer sent a letter dated April 22, 1988 to the claimant in which it was stated that the claimant was eligible for rehire to her original position under the same terms of employment. The condition of rehire was that the claimant would perform accurately as she had previously done and would not

return to the employment with a "negative attitude" which had contributed to her discharge. The claimant was asked to respond to this offer of re-employment by Wednesday, April 22, 1988 (see employer's exhibit #1). The claimant made no response to the offer of rehire.

#### CONCLUSIONS OF LAW

In Vishton v. Baltimore County, (879-BR-83) the Board of Appeals held that where a claimant is offered his or her old job back the burden shifts to the claimant to show that the work is not suitable.

In the instant case, the claimant was offered her original job under the original terms of the employment, i.e. reinstatement provided the claimant performed as she had previously performed and did not display a "negative attitude."

Evidence presented by the claimant does not meet the burden imposed as to demonstrate that the work offered was not "suitable." A similar conclusion was reached in the case of Ervin v. Governmental Services, (297-BR-85), in which the claimant refused an offer of her "exact former position" on the ground that she was unwilling to enter into child care arrangements. In that case, the Board of Appeals held that the claimant's former job was clearly suitable under Section 6(d) and her refusal was without good cause and the maximum penalty was imposed.

The facts of the instant case do not establish good cause for the claimant's refusal to accept her former position with the fully reasonable provisions that she perform her work as previously and that she abandon a "negative attitude" which contributed to her discharge.

#### DECISION

It is held that the claimant failed, without good cause, to accept available, suitable work, within the meaning of Section 6(d) of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits for the week beginning April 17, 1988 and until such time that she becomes re-employed, earns at least ten times her weekly benefit amount.

The determination of the Claims Examiner is modified accordingly.



Louis Wm. Steinwedel  
Louis Wm. Steinwedel  
Hearing Examiner

Date of hearing: 6/7/88

rc

(3455)-Scitti

Copies mailed on 6/9/88 to:

Claimant

Employer

Unemployment Insurance - College Park - MABS