

 **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.:	148 -BR-90
	Date:	Feb. 16, 1990
Claimant: Larry Sullivan	Appeal No.:	8914757
	S. S. No.:	
Employer: Bayliner Marine Corporation c/o Gates, McDonald	L O. No.:	3
	Appellant:	EMPLOYER

Issue:

Whether the claimant left 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 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

March 18, 1990

— 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.

morning of claimant's voluntary quit he responded to LeRoy Dzuik's urging to pick up the pace that more assistance was needed in order to perform his job, that is, "when are you going to get someone to help?" The immediate supervisor Mr. Dzuik responded "I don't want to hear it." This exchange was only the latest of a long series of objections by claimant that the work he was required to do exceeded his capacity. Every inquiry by the claimant of management as to when additional help would be hired to work as Gel-coater met with a similar response, that someone was to be hired they just did not know when. In order to complete his daily responsibilities the claimant was forced to report to work early, often work straight through breaks and lunch, and just as often stay late. His supervisors nevertheless consistently urged claimant to do more, to improve his production, and to work harder. On the morning of November 7, 1989, the claimant responded to his manager's flippant retort with an equally flippant "I don't either. I quit." Thereupon the claimant left the employer's premises and only returned for his paycheck the following Friday. On appeal, the employer's representative admits that the demands of the job were excessive but he had promised and had been promised to bring on new people to remedy that problem. No time schedule for such hiring was or is in place.

CONCLUSIONS OF LAW

Article 95A, Section 6(a) provides that an individual is disqualified for benefits when his/her unemployment is due to leaving work voluntarily. This section of the Law has been interpreted by the Court of Appeals in the case of Allen v. CORE Target City Youth Program (275 Md. 69), and in that case the Court said: "As we see it, the phrase 'due to leaving work voluntarily' has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment." However, the Board of Appeals has held that where a claimant's decision to quit in the heat of anger is later confirmed, after the claimant has had an opportunity to reflect, the claimant has shown the requisite intent to voluntarily quit. Stefan v. Levenson & Klein, 1794-BR-82. The claimant's intent to quit thus established brings the existence of mitigating circumstances into question.

The Fair Labor Standards Act in its regulations provide that an employer must pay overtime compensation for hours worked in excess of the maximum allowable regular hours for the industry. 29 C.F.R. Section 778.103. Claimant's resignation therefore is for good cause where, as here, his employer fails to pay such overtime pay in violation of the statute and regulation. Dumbar v. St. Charles Fitness Center, 726-SE-83. Furthermore, mere incapacity has been held not to constitute misconduct within the meaning of

While the claimant stated that he worked through his breaks, lunch period and worked overtime, as well as starting a half-hour early every day, the only time he received no pay was for the half hour that he reported early each day. There is no allegation that the employer required the claimant to report early. In fact, the claimant stated that sometimes he used that half hour to get ready to go to work.

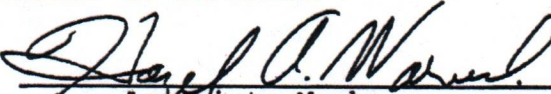
Although the claimant wasn't able to complete his work during his eight-hour shift, the other gel-coater was able to perform the same amount of work in six hours.

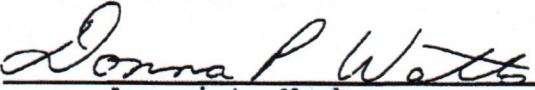
The Board, therefore, finds that the claimant did not have good cause or valid circumstances for resigning his position with the employer.

DECISION

The claimant left his employment voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning November 5, 1989 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$1,760), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member

HW:W

kbm

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE -
CUMBERIAND

EMPLOYER

Bayliner Marine Corporation

 **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

— DECISION —

Claimant: Larry L. Sullivan
Date: Mailed: 12/21/89
Appeal No.: 8914757
S. S. No.:
Employer: Bayliner Marine Corporation LO. No.: 3
Appellant: Claimant
Issue: Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) 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 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

January 5, 1990

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Mr. LeRoy Dzuik,
Land Supervisor,
William L. Webb,
Representative from
Gates McDonald.

FINDINGS OF FACT

The claimant tolled in the production work of Bayliner Marine Corp. as gel-coater from March 17, 1987, until his resignation of November 7, 1989. At the time of separation the claimant earned approximately \$6.00 per hour. On the

Section 6(c) of the Maryland Unemployment Insurance Law. This claimant was unable to complete his assigned duties in the normal hours and therefore work in excess of those hours, apparently without adequate compensation. His resignation therefore is for good cause within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law.

The decision below will thus be reversed.

DECISION

The claimant left his employment voluntarily, but for good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on his separation from employment with Bayliner Marine Corporation. The claimant may contact the local office about the other eligibility requirements of the Law.

The Claims Examiner's holding in the instant case is hereby reversed in its entirety.

Carl Frank Farley / pdd
Carl Frank Farley
Hearing Examiner

Date of Hearing: 12/15/89
pdd/Specialist ID: 03251
Cassette No: 10529 (B)
Copies mailed on 12/21/89 to:

Claimant
Employer
Unemployment Insurance - Cumberland (MABS)

Mr. William I. Webb