



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
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BOARD OF APPEALS
THOMAS W. KEED -
Chairman
HAZEL A. WARRICK
Associate Member
SEVERN E. LANIER
Appeals Counselor
MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Claimant: Joseph E. Clark

Decision No.: 170-BR-87
Date: March 6 , 1987
Appeal No.: 8510144 &
8510145
S. S. No.:

Employer: WC & AN Miller Development Co. L.O. No.: 50

Appellant: REMAND FROM COURT
CLAIMANT

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 and whether the claimant was able, available 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 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 April 5 , 1987

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

EVALUATION OF THE EVIDENCE

This case was remanded to the Board of Appeals by the Circuit Court for Montgomery County for reconsideration. The Board did not hold an additional hearing, but has reviewed the entire

record in this case including the written argument and exhibits submitted by the claimant in its appeal to the Circuit Court. Based on the entire record, the Board will reverse its prior decision.

REVIEW ON THE RECORD

The Board of Appeals reverses its prior decision and that of the Hearing Examiner and concludes:

- (1) that the claimant had good cause for filing a late appeal, within the meaning of Section 7(c)(3) of the law;
- (2) that the claimant did not voluntarily quit his job with W.C. & A. N. Miller Development Company, but was discharged for reasons that do not constitute misconduct;
- (3) that the claimant has been meeting the requirements of Section 4(c) of the law since July 15, 1985.

With regard to Section 7(c)(3), the Board finds that the confusing wording of one of the Notices of Benefit Determination received by the claimant (he received more than one), that he was disqualified until he supplied a physician's statement, coupled with the claimant's limited educational background and communication skills, resulted in tremendous confusion for the claimant who believed that he could not file an appeal until he obtained a note from his doctor. Since that was the reason why he filed a late appeal, the Board concludes that this constitutes good cause for his late appeal.

With regard to the merits of the case, the Board finds that the claimant had no intention of quitting his job. He became seriously ill on or about March 5, 1985, requiring major surgery. He informed his employer of this situation and that he would need time off. Although the employer was fully apprised, it apparently¹ made the decision not to hold the claimant's job for him and when the claimant was ready to return to work in July of 1985, the employer would not take him back. Therefore, the Board concludes that the claimant was discharged and for a non-disqualifying reason under Section 6 of the law.

Finally, with regard to Section 4(c), the Board finds that there is now in the record, documentary evidence to support the claimant's testimony that he was released by his physician and able to work effective July 15, 1985.

¹ The employer did not present evidence at the hearing, but the facts support such an inference.

DECISION

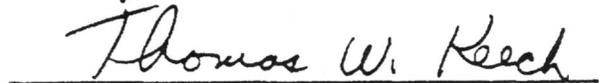
The claimant filed a late appeal, but for good cause, within the meaning of Section 7(c)(3) of the Maryland Unemployment Insurance Law.

The claimant was discharged but not for gross misconduct or misconduct, connected with the work, within the meaning of Section 6(b) or Section 6(c) of the Maryland Unemployment Insurance Law. No disqualification is imposed based upon his separation from employment with W.C. & A. N. Miller Developing Company.

The claimant was able, available and actively seeking work within the meaning of Section 4(c) of the Maryland Unemployment Insurance Law. Benefits are allowed after July 15, 1985.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K
kmb

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CLAIMANT

EMPLOYER

Caryn Fiscella
Legal Aid Bureau, Inc.
12118A Heritage Park Circle
Silver Spring, MD 20906

OUT-OF-STATE CLAIMS