Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

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

— DECISION —

Decision No.: 549 -BR-88

Date: June 24, 1988

Claimant: Mary L. Hilderbrand

Appeal No.: 8801440

S. S. No.:

Employer: NMCS, Inc.

L O. No.: 25

Appellant: 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.

— 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 July 24, 1988

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals affirms the decision of the Hearing Examiner but disagrees with the findings of fact and conclusions of the Hearing Examiner.

The claimant was employed as a data entry worker beginning December 15, 1985. She earned $7.88 per hour.

The claimant was pregnant and applied for a leave of absence. This was granted on June 22, 1987. On July 9, 1987, the claimant wrote the employer a letter of resignation, effective August 13, 1987. The resignation never became effective, however, because another employee left work at that time and the claimant agreed to become a part time employee instead. On September 30, 1987, the claimant went part time. She then worked until October 19, 1987 when she left due to her advanced stages of pregnancy. On November 30, 1987, the claimant informed the employer that she could return to work on January 4, 1988 but that she could only work part time and that the part time hours had to be on Monday and Tuesday, as those were the days that she had a babysitter. The employer could not accommodate the claimant's proposed schedule and her duties were absorbed by the other people in the office. The claimant never did return to the work site, although she performed some unspecified duties at home during the six weeks following the birth of her child.

The Board concludes that the claimant was allowed to retract her resignation by the employer in August of 1987. For this reason, her resignation was no longer of any force and effect, once it was changed from a resignation to a transfer from a full time to a part time position.

The Board has repeatedly ruled, however, that an employee on a leave of absence has the burden of re-establishing the employment relationship. Lawson v. Security Fence Company, 1101-BH-82. In this case, the claimant did make some attempt to re-establish her regular part time working relationship. It was the claimant, however, who imposed additional limitations on this work, i.e., that it only be on Mondays and Tuesdays. The employer could not accommodate these additional limitations. Since the burden was on the claimant to re-establish the actual working relationship, her imposing additional limitations on her work availability when she contacted the employer shows that she has not met this burden. Where a claimant will return from a leave of absence only upon the employer agreeing to changed conditions of employment, this action constitutes a voluntary quit, within the meaning of Section 6(a) of the law.

The reason for the claimant's voluntary quit constituted neither good cause nor valid circumstances. The reasons certainly were not work related and therefore could not be good cause. Nor can it be said that the claimant's reason for leaving were necessitious and compelling and left no reasonable alternative other than to quit the employment. Clearly,

the claimant could have arranged other child care procedures to accommodate the requirements of her part time job. Under all these circumstances, the maximum penalty must be imposed under Section 6(a) of the law. This is the same penalty imposed by the Hearing Examiner, but the reasons for the penalty are different, as is explained above.

The penalty for voluntarily leaving work should begin on the date the claimant was physically able to return to work but did not do so, i.e., the week beginning January 3, 1988.

DECISION

The claimant voluntarily left her work, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning January 3, 1988 and until she becomes reemployed, earns at least ten times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed, but for the reasons stated above.

Thomas W. Keech
Chairman

Associate Member

K:W
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

National Medical Computer Service
ATTN: Lynn Clendaniel

UNEMPLOYMENT INSURANCE - EASTON

STATE OF MARYLAND
APPEALS DIVISION
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201
(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

--- DECISION ---

Mailed: 3/22/88

Date:

Mary L. Hilderbrand — 8801440-EP

Claimant: — Appeal No:

S.S. No.:

NMCS, Inc. — 25

Employer: — L.O. No.:

Employer

Appellant:

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 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 4/6/88

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--- APPEARANCES ---

FOR THE CLAIMANT:
Claimant-Present

FOR THE EMPLOYER:
Lynn Clendaniel,
Office Manager
Grace Swartz,
Office Supervisor

FINDINGS OF FACT

The claimant was employed by National Medical Computer Service, Inc. from December 15, 1985 until October 19, 1987. She was a Data Entry Person earning $7.88 an hour.

The claimant was pregnant and applied for a leave of absence which was granted on June 22, 1987. Subsequently, on July 9, 1987, the claimant wrote the employer a letter of resignation effective August 13, 1987, to the effect that she could not

return to work on a full-time basis since there was no part-time day opening for her and she had accepted a position with another firm.

The claimant actually did not leave the employer until October 19, 1987. The reason for this was that the employer lost another worker and the claimant was substituting for her.

The claimant delivered her child on October 21, 1987, and according to medical information was released to return to work on January 4, 1988.

The employer divided up the claimant's duties by spreading the work between two other individuals.

The claimant testified that she did not have another job to go to as stated in her letter of resignation.

CONCLUSIONS OF LAW

In the case of Robert v. Tracer, Jitco, 911-BR-83, the Board of Appeals held: When a claimant's resignation is tendered, the employer is under no obligation to disregard the resignation even where the claimant seeks to revoke it during the notice period.

In this case, the claimant did resign and the employer accepted it. She had been granted a medical leave and chose not to accept it. Under such circumstances, her leaving cannot be considered to be for good cause or valid circumstance. The maximum disqualification will be imposed.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning October 18, 1987 and until she becomes re-employed, earns at least ten times her weekly benefit amount ($1,950) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is modified.

John F. Kennedy, Jr.
Hearing Examiner

Date of hearing: 3/8/88
rc
(901)-Tieder
Copies mailed on 3/22/88 to:

Claimant
Employer
Unemployment Insurance - Easton - MABS

National Medical Computer Service, Inc.