

 **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.:	145-BR-91
Date:	February 1, 1991
Claimant: Anthony Benjamin	Appeal No.: 9009247
	S. S. No.:
Employer: Creaney & Smith Properties, Inc.	L. O. No.: 1
	Appellant: EMPLOYER
Issue:	

Whether the claimant was discharged for misconduct, connected with his work, within the meaning of Section 6(c) of the law; whether the claimant left work voluntarily, without good cause, within the meaning of Section 6(a) of the law.

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— 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 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 3, 1991

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— 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 and concludes that the claimant voluntarily quit his job, without good cause or valid circumstances, within the meaning of Section 6(a) of the law.

A refusal to accept a transfer to another position with the same employer constitutes a voluntary quit under Section 6(a) of the law. Kramp v. Baltimore Gas & Electric Company, 1051-BR-82.

Further, a demotion is not an unreasonable action on the part of an employer where the claimant has demonstrated an inability to perform the function of the higher position, and such a demotion does not amount to good cause. Krach v. Wa Wa Market, 816-BH-84.

Although the new assignment would have meant a reduction in responsibilities, it would have paid the same amount of money, offered the same hours, and was at the same location. Further, the new assignment was reasonable, given the problems which the claimant had experienced in performing his old assignment.

The Board finds neither good cause nor valid circumstances for the claimant's refusal.

#### DECISION

The claimant left work 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 May 27, 1990 and until he becomes re-employed, earns at least ten times his weekly benefit amount (\$2,050), and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

  
Associate Member

  
Chairman

HW:K

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Kathy L. McCalip, Esq.  
Shapiro & Olander

UNEMPLOYMENT INSURANCE - BALTIMORE

 **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 —**

Date:	Mailed: 12/7/90
Claimant: Anthony M. Benjamin	Appeal No.: 9009247
	S. S. No.:
Employer: Creaney & Smith Properties, <del>Inc.</del>	001
	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 TO PETITION FOR REVIEW —**

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON December 24, 1990

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**— APPEARANCES —**

FOR THE CLAIMANT:

Anthony M. Benjamin - Present

FOR THE EMPLOYER:

Gregory J.  
Campanaro, Chief  
Financial Officer;  
Kathy L. McCalip,  
Esquire

This case was remanded by order of the Board of Appeals dated November 7, 1990 for a de novo hearing.

## FINDINGS OF FACT

The claimant was employed as a bookkeeper for about two years until May 31, 1990. Toward the end of his employment, he earned \$10.00 an hour. The employer is engaged in real estate management and development work.

For some time, there were bookkeeping errors which the employer found in the claimant's work. There were a number of mistakes and there was some consultations between the parties about this.

In February 1990, there was a meeting between the claimant and the chief financial officer. The employee was told that the employer dissatisfied with his work performance. During that same meeting the claimant was told that he would be offered work in a lateral move as the chief bookkeeper to one partnership. It would be the same salary and the same working hours. The claimant had been working on a number of small partnerships. The claimant chose not to accept the lateral transfer of work. He believed that it was less responsibility and he considered it to be a demotion.

In that same meeting the claimant was then offered a chance to remain to the end of May 1990 if he chose to do so unless he found employment earlier. The employer considers that the claimant quit his job at that point.

This Hearing Examiner finds as a fact that the claimant did not voluntarily intend to resign employment at that point or at any point.

The claimant states that he worked to the best of his ability but he could not seem to satisfy the employer. The claimant was then separated from employment.

## CONCLUSIONS OF LAW

There is absolutely no evidence to show that the claimant voluntarily resigned his employment as contemplated by the applicable case law. The key work is voluntary. The claimant did not formulate the necessary intent to voluntarily quit his employment.

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."

There was an understanding between the parties that the claimant would have to leave employment as of the end of May 1990 but this does not constitute a voluntary action on the part of the claimant.

There is also insufficient evidence to show that the claimant was discharged for either misconduct or gross misconduct.

It has been held that dissatisfaction with an employee's work on the part of the employer, mere inefficiency, incapacity, or ordinary negligence on the part of the employee in isolated instances does not constitute misconduct within the meaning of Section 6(c). (See Chambers v. J. P. Mancini, 408-BH-84, Albaugh v. Good Samaritan Hospital, 186-BH-83, and Ellis v. Lana Fab Corp., 497-BH-85).

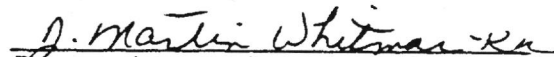
Since the claimant did not voluntarily intend to quit his job, he cannot and will not be disqualified under Section 6(a) of the Law. There is also evidence to show that the claimant was not discharged for misconduct or gross misconduct, and therefore, he will not be disqualified under Section 6(b) or Section 6(c) of the Law.

#### DECISION

The claimant was separated from employment for a non-disqualifying reason pursuant to Section 6 of the Maryland Unemployment Insurance Law. There is no disqualification imposed upon the claimant's separation from this employer.

The previous determination of the Baltimore City Unemployment Insurance Administration Office is hereby affirmed.

The claimant may now consult his local office with regard to other eligibility requirements of the Law.

  
J. Martin Whitman  
Hearing Examiner

Date of Hearing: November 30, 1990  
km/Specialist ID: 01037  
Cassette No: 9775  
Copies mailed on December 7, 1990 to:

Claimant  
Employer  
Unemployment Insurance - Baltimore (MABS)

Board of Appeals

Shapiro & Olander  
Attn: Kathy L. McCalip, Esquire