

 **Maryland**
Department of Economic &
Employment Development

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Mark L. Wasserman, Secretary

Board of Appeals
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Baltimore, Maryland 21201

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

— DECISION —

Decision No.:	1765 -BR-92
Date:	October 9, 1992
Claimant:	Edward Gender, Sr.
Appeal No.:	9206122
S. S. No.:	
Employer:	The Baltimore Sun Co.
L. O. No.:	50
Appellant:	EMPLOYER
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of §8-1001 of the Labor and Employment Article.

— 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.

November 8, 1992

THE PERIOD FOR FILING AN APPEAL EXPIRES

— 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.

The employer decided for economic reasons that it was necessary to reduce the number of its employees. Instead of laying them off, the employer offered all employees a "buyout" which consisted of the payment of a lump sum and the payment of certain medical payments in return for the employee's voluntary resignation. The employees were advised in December of 1991 that they had until January 17 to decide. Once they had decided to resign, they had a seven-day period during which they could rescind their decision. In this case, the claimant was offered 18 months of full salary plus 85% of the medical insurance during that 18-month period.

The employer anticipated that an adequate number of people would voluntarily take this package, so that no one who wanted to continue to work would be laid off. The employer considered that there was virtually no risk of a layoff as a result of this program. The employer did not circulate to the employees any information which indicated that there was a threat of a layoff.

The claimant feared for the future of the transportation department in which he worked. There were rumors of future plans to move to a new building, and the proposals for the new building did not even include a maintenance garage. The claimant's employment depended on the employer maintaining an adequate number of vehicles to justify his employment as a mechanic on those vehicles. The employer had already leased 21 cars instead of the usual practice of buying and maintaining its own. The claimant felt that the transportation department was being slowly eliminated and that he would eventually lose his job if he did not take this buyout offer. He did not believe that he could last another five years so as to qualify for early retirement.

In actuality, the employer lost 295 out of some 1200 employees through the buyout. The transportation department is not being eliminated. In fact, three persons have been transferred into the transportation department since the buyout, and other departments have also hired some new people.

In the case of Bishop v. Digital Equipment Corporation (270-BH-91), the Board ruled that where employees were informed that their jobs were definitely being eliminated, and that their only hope of retaining employment was to sign up for a transfer pool (called "the dead pool" by the employees in that case), those employees were laid off, and their acceptance of

an incentive retirement bonus did not change that layoff into a voluntary quit.

This is not the situation, however, in the present case. The claimant was not told that his job was eliminated, nor was he even informed by management that layoffs were imminent. The employer assumed, correctly, that a sufficient number of people would voluntarily retire in order to make layoffs unnecessary. The claimant, using as a source rumors from other employees, simply believed subjectively that his department did not have a bright future with his employer. Although there was some objective basis for the claimant's belief, this is not a case like the Digital case, where the employees were told bluntly that their jobs were being eliminated and that they were virtually assured of being unemployed unless they took the bonus package. In this case, the claimants were not told that they were laid off or that their jobs were eliminated. The buyout was explained to the claimant as a free and voluntary choice -- and, since a sufficient number of people took the buyout, it stayed that way. The claimant's subjective fears are understandable, but they are not sufficient to change a situation from a voluntary quit to a layoff.

Likewise, the claimant's decision to take the buyout package and leave was not a decision made for good cause or valid circumstances. He was not told that he was going to be laid off or that his job or duties would change. Although the future of his department looked grim to him, he had not been given any information from management which indicated that he would be laid off at any time in the foreseeable future, and there were no plans to do so. In addition, his fears did not come to fruition. The claimant's acceptance of the buyout bonus on the basis of the subjective fears does not amount to good cause or valid circumstances for quitting. Therefore, the Board must impose the maximum penalty under §8-1001 of the law.

DECISION

The claimant voluntarily left his employment, without good cause, within the meaning of §8-1001 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning January 12, 1992 and until the claimant becomes reemployed, earns at least ten times his weekly benefit amount (\$2,230) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech

Chairman

Harold D. Venable

Associate Member

K:W

kbm

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CLAIMANT

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Maryland

Department of Economic & Employment Development

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— DECISION —

Mailed 4/17/92

Claimant: Edward L. Gender, Sr.

Date:

Appeal No.:

9206122

S. S. No.:

Employer: The Baltimore Sun Company

LO. No.:

50

Appellant:

claimant

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001.

— 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 OF WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

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— APPEARANCES —

FOR THE CLAIMANT:

Present

FOR THE EMPLOYER:

Represented by Dee
Addington, Personnel
Specialist

FINDINGS OF FACT

The claimant was employed as a fleet mechanic for 23 years. Because of a decline in profits, the employer, to reduce expenses, offered a "buy out" for employees who wanted to leave in lieu of possible layoff.

The "buy out" offer was good until December 15, 1991 through January 17, 1992.

The offer was made to 1,200 employees. Because the claimant had more than 14 years of service, he received 18 months' salary and 85% of his medical benefits.

The claimant took the buy cut rather than run the risk of being laid off.

EVALUATION OF THE EVIDENCE

The employer's representative at the hearing testified that no layoffs were anticipated and; therefore, the claimant quit without good cause or valid circumstances.

The fact that the "buy out" was offered to reduce expenses, support is a conclusion that a layoff was also possible for those who chose not to accept it. Thus, I find the claimant's conclusion that he could have been laid off, had he not accepted the "buy out" reasonable.

CONCLUSIONS OF LAW

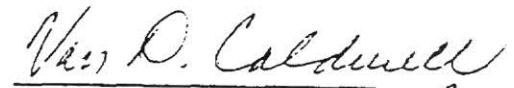
The Maryland Code, Labor and Employment Article, Title 8, Section 1001 (c) provides that an individual shall be disqualified from benefits where his unemployment is due to leaving voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer. The facts established in the instant case do not demonstrate such good cause under the Law. However, Title 5, Section 1001 (c) provides that a reduced disqualification may be imposed where the separation is precipitated by (1) a substantial cause connected with the conditions of employment or (2) another cause of such a necessitous or compelling nature that the claimant had no reasonable alternative but to leave the employment. The facts in this case demonstrate such valid circumstances, and therefore, a reduced disqualification is appropriate.

I find valid circumstances, because the claimant's decision to accept a "buy out" rather than run the risk of a layoff was a reasonable alternative, due to changes in the economical conditions of the employer. Goldsmith v. Quinton Fence Co., 618-BR-83.

DECISION

The claimant left work voluntarily, without good cause, within the meaning of Title 8, Section 1001 of the Maryland Code, Labor and Employment Article. Benefits are denied for the week beginning January 12, 1992 and the four weeks immediately following.

The determination of the Claims Examiner is modified.


Van D. Caldwell
Hearing Examiner

Date of Hearing: 4/16/92
Specialist ID: 50507
cd/CASSETTE IN FILE

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