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

— DECISION —

Decision No.: 270 -BH-91

Date: March 13, 1991

Claimant: Robert F. Bishop
Larry Morris
Darren Houston

Appeal No.: 9101498
9101153

S. S. No.: 9100518

Employer: Digital Equipment Corp.
c/o ADP

L O. No.: 9 & 7

Appellant: BOARD ASSUMED JURISDICTION

Issue: Whether the claimants' unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law and whether the claimants are receiving or have received dismissal payment or wages in lieu of notice within the meaning of Section 6(h) 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 April 12, 1991

— APPEARANCES —

FOR THE CLAIMANT:

Larry Morris - Claimant
Robert Bishop - Claimant
Darren Houston - Claimant

FOR THE EMPLOYER:

Frank Solomon - ADP
Maury Malveaux - Personnel Consultant

PROCEDURAL NOTE

A consolidated hearing was held in these three cases before the Board of Appeals on February 19, 1991. The Board has considered all the evidence presented at that hearing.

FINDINGS OF FACT

All three claimants were employed by Digital Equipment Corporation. There came a time, towards the latter part of 1990, when the company decided to "downsize its operation," with the intention of reducing its workforce by approximately 3,000 employees. Rather than arbitrarily lay off employees, the employer offered a voluntary severance package, with monetary incentives to encourage employees to voluntarily leave. These packages were offered in the latter part of 1990; the offers expired December 31, 1990. Although no employee was forced to accept the package, those who were offered it were informed, one way or the other, that their present job was being eliminated and that if they rejected this severance package, they would be placed in a resource pool, from which they could seek other jobs, both within and without the company.[1] Specific consequences of failing to accept the severance package apparently differed depending on the position of the employee in the company. The specific facts for each of these three claimants are as follows.

Robert Bishop (Appeal No. 9101498)

Robert Bishop was a deck site sales consultant for computer rooms and networks at the Landover, Maryland location. In June, 1990, he was told that his position was being phased out as part of the employer's downsizing and he was offered a severance package which included two full years of pay. He was told that if he didn't take the package and leave, he would be placed in the resource pool, which meant that he would be offered up to two jobs with the company, which could be located anywhere in the country. He could refuse the first job but he would have to accept the second job. There was no discussion regarding the salaries of these jobs.

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1 Some may not have specifically been told about the pool, but all knew they would have to seek other jobs at the company.

Bishop decided to accept the offer on approximately December 14, 1990. By this time the package had been reduced to only 77 weeks of pay (a lump sum of over $60,000). Bishop's former job no longer exists at the Landover facility.

Larry Morris (Appeal No. 9101153)

Larry Morris was employed at the Landover facility, where he managed the audio visual department. He had worked for the employer for six years.

Morris was offered a severance package in approximately July, 1990. He was approached by his manager and informed that his job no longer existed. He was not specifically told about the resource pool but he was given another desk from which he could look for other positions. He was also told he had thirty days to decide whether or not to accept the severance package.

Morris attempted to stay on and look for other jobs with the company, but found that most of the other jobs were frozen. He did initially find another job with the company for which he started training. However, he was unable to successfully complete the training program.

When this job didn't work out, he was again offered the severance package but with a reduced amount of money. This time the claimant decided to accept the package, and he received 11 weeks of severance pay. He left the company effective November 5, 1990. Morris felt that he had no choice, as there were no other jobs he could do, and the amount of money being offered in the severance package was getting smaller the longer he stayed on.

Darren Houston (Appeal No. 9100518)

Darren Houston worked for 5 1/2 years as a customer response representative in the Landover facility. On or about November 1, 1990, he was offered a severance package at a meeting with his supervisors. Although he was not told that the package was mandatory, he had already been led to believe that his position would be terminated. The supervisor had made it clear that if three or four people from this department didn't voluntarily take the package and leave, the employer would choose who would be laid off. Shortly thereafter, he was removed from his regular shift (4 to midnight) and placed on the 9:30 to 7:00 shift without any warning. Then his name was omitted from the schedule posted and from the internal mailing list.

Despite these ominous signs, the claimant did not accept the offer immediately. He knew that if he could hold on to his job until January 6, 1991, he would become vested in the retirement plan. However, he was given only thirty days within which to make up his mind about whether to accept the severance package, and fearing that he would be laid off anyway, but without any severance pay, he decided to opt for the package. His last day of work was December 7, 1990. Houston received 21.7 weeks of severance pay.

CONCLUSIONS OF LAW

Section 6(a)

The first issue to be decided is whether or not the claimants voluntarily quit their jobs within the meaning of Section 6(a) of the Law. The Board of Appeals concludes that they did not. It is undisputed by the employer that a definite amount of employees were going to be laid off and their jobs eliminated. Rather than making an arbitrary decision on its own, the employer decided to give monetary inducements to encourage people to voluntarily accept a layoff.

In Conroy, et. al. v. Alto Gravure, Inc., 436-BH-86, the Board found that the claimants were laid off by their employer for lack of work despite the fact that the employer allowed the union to choose the method by which people would be laid off, and the method chosen was to elicit volunteers. The Board reasoned that:

> it is clear from the facts that it is the employer's decision, and its decision alone, how many pressmen will work and how many will be laid off in any given week. . . . However, the employer argues that because the employees were given a chance to volunteer, this changes the entire picture and these employees have now voluntarily quit and should subsequently be disqualified from unemployment insurance benefits. The Board does not agree.

The Board concludes that the same reasoning applies to these three claimants. The employer made a decision to lay off employees. Because its method of determining who would be laid off was not totally arbitrary or by straight seniority does not change the fact that these were layoffs mandated by the employer. Further, these claimants really did not have a choice at all. In all three cases, their jobs were eliminated. Although they were given an opportunity to find other jobs in

the company, the reality was that there were very few, if any, jobs available, at least within the local area that they lived. Further, the employer increased the inducement by arranging it so that the longer an employee stayed on and thought about the package, the less money he was eligible for. Each employee knew or was lead to believe that eventually he would be laid off, with or without the severance package, and the package only induced him to accept the layoff sooner, rather than later. This is clearly not a voluntary quit under Section 6(a) of the Law.

Section 6(h)

The Board concludes in each of these cases that the claimant's unemployment was due to the abolition of his job; therefore, any severance pay received is not deductible from unemployment insurance benefits within the meaning of Section 6(h) of the Law.

Where a claimant is permanently laid off due to a reduction in force and not replaced, his job has been abolished within the meaning of Section 6(h) of the Law. See, Caridi v. United Container Machinery, 9-BH-87; see also, Moore v. Ryland Group, Inc., 167-BR-91.

In Trout v. Case Communication, 461-BR-87, the claimant was permanently laid off due to a reduction in force and consolidation of the work force. As part of this consolidation another person assumed all of the claimant's former duties. This was still held to be a job abolishment; the claimant's duties were still being performed, but his job was consolidated with others. See also, Dorsey v. Signet Bank of Maryland, 788-BH-88.

Applying the reasoning of those cases here, the Board concludes that the unemployment of all three claimants was due to the abolition of their jobs, and that any severance pay they received is not a bar to benefits under Section 6(h) of the Law.

DECISION

The claimants did not voluntarily quit their jobs within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. No disqualification under this Section of the Law is appropriate.

The claimants have received dismissal payments which are not a bar to benefits within the meaning of Section 6(h) of the Maryland Unemployment Insurance Law.

Hazel A. Warnick
Associate Member

Thomas W. Keech
Chairman

H:D
kmb
DATE OF HEARING: February 19, 1991

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Digital Equipment Corporation

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UNEMPLOYMENT INSURANCE - TOWSON AND COLLEGE PARK