

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*Mark L. Wasserman, Secretary*

*Board of Appeals*  
*1100 North Eutaw Street*  
*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.:	324-BR-93
Date:	Feb. 25, 1993
Claimant:	Dorothy O. Smith
Appeal No.:	9225021
S. S. No.:	
Employer:	Complete Communications Installations, Inc.
L.O. No.:	7
Appellant:	EMPLOYER
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of §8-1001 of the Labor and Employment Article.

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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 CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

March 27, 1993

THE PERIOD FOR FILING AN APPEAL EXPIRES

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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 reverses the decision of the Hearing Examiner. The Board of Appeals disagrees with much of the reasoning of the Hearing Examiner.

The employer competes for a contract to provide telephone operation services for the Department of Transportation (DOT). A prior contractor, Northern Telecom, employed four telephone operators for the DOT contract. When the employer in this case, Complete Communications Installations, Inc. (CCI) took over the contract, it hired all four operators to continue performing the same telephone operator services for DOT. They continued to perform the same job functions for the same client, but they then worked under the supervision and control of this employer and were paid by this employer. In turn, this employer received the monies promised in the contract.

Another company, Synetics, took over the contract with DOT, beginning October 1, 1992. The claimant was told shortly before the transfer that CCI no longer had the contract she worked under. She was told that there was an understanding between CCI and Synetics that Synetics would hire all four operators to continue to perform the same tasks on the DOT contract.

No offers of a transfer within CCI were made to the claimant, and she did not request a transfer. It was the understanding of all parties that the claimant would stay in her present position and perform the exact same services on the contract with DOT when Synetics took over the contract on October 1st.

This is a discharge for lack of work, as far as the Unemployment Insurance law is concerned. The claimant's job was abolished when CCI lost the contract. No other jobs were offered to her at this point by CCI. Her job no longer existed.'

The employer, CCI, has repeatedly attempted to raise the issue of whether the claimant should be disqualified based upon the reason for her late separation from Synetics. But the Board

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Even if the claimant had voluntarily quit, the Board would rule that the claimant had good cause for leaving. The Board has ruled in the past that where a business is bought out by a new employer, the employees cannot be penalized for "voluntarily" quitting when they continue to perform the same jobs for the new employer. This same reasoning applies where a discrete part of a business is transferred to a new business entity. An employee who merely attempts to retain her same job should not be penalized because the change of business entity requires her technically to resign from the previous employer.

has no jurisdiction to reach this issue.

The agency's computer records show that a Claims Examiner of this agency made a determination on November 13, 1992, that the claimant left employment with Synetics for poor work performance. No penalty was imposed based upon that separation from Synetics. No appeal was filed by Synetics. A Claims Examiner redetermined that same case on January 26, 1993. According to that redetermination, the claimant was discharged for failure to pass probation. Again, no penalty was imposed. The last date to appeal this determination was February 10, 1993, but no appeal has been filed.<sup>2</sup>

Synetics was apparently either satisfied with the decision of the Claims Examiner or neglected to exercise its appeal rights.<sup>3</sup> And the Board of Appeals has no jurisdiction to rule on an issue that has never been appealed.<sup>4</sup>

#### DECISION

The claimant did not voluntarily quit employment within the meaning of §8-1001 of the law. The claimant's layoff is considered a discharge, but not for any misconduct, within the meaning of §8-1002 or 1003 of the Labor and Employment Article. No penalty is imposed based upon her separation from Complete Communications Installations, Inc. The claimant should contact her local office regarding the eligibility requirements of the law.

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<sup>2</sup>Synetics, as the "last employing unit" of the claimant, had the right to notice of this determination, see, §8-806(d)(2)(i), and the right to appeal it. See, §8-806(e)(1).

<sup>3</sup>The fraud issue raised by CCI in its letter to the Board was also raised by the local office on January 14, 1993, but a determination was made that the claimant had not committed fraud. It does not appear that anyone was given a written copy of this determination. See, §8-806(d)(2)(i).

<sup>4</sup>Although it appears that CCI has more at stake financially than Synetics in this determination, the statute establishes Synetics as the party who has the right to appeal. CCI argues that the claimant received a windfall as a result. Although this is possible, it is also true that CCI would receive a windfall itself if, after laying off an employee for lack of work, it escaped paying any benefit charges at all.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech  
Chairman

Donna P. Watts  
Associate Member

K:W

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - COLLEGE PARK

 **Maryland**  
Department of Economic &  
Employment Development

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*Room 511*

*1100 North Eutaw Street  
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*Telephone: (410) 333-5040*

**— D E C I S I O N —**

Claimant:	Dorothy O Smith	Date Mailed:	12/31/92
		Appeal No.:	9225021
		S. S. No.:	
Employer:	Complete Commun Installations, Inc.	LO. No.:	7
		Appellant:	Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Title 8, Section 1003.

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

1/18/93

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

NOTE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

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**— A P P E A R A N C E S —**

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Janice Ferlich,  
Office Manager

**FINDINGS OF FACT**

The employer installs and maintains commercial telephone services.

They also provide telephone operator services for the Department of Transportation until October 1, 1992, when they lost the

contract. The claimant was employed as an operator and worked for the employer until September 30, 1992.

On or about September 30, 1992 the claimant was offered and accepted employment to perform the same job with Synetics a new contractor. She started to work in October 1992.

At the hearing the employer's representative testified that the claimant quit before exploring all reasonable alternatives but she was not clear and convincing as to what the alternatives were. I, therefore, find that the claimant's job was, in fact, abolished when they lost the contract and going to work for the new contractor doing the same work was the most reasonable alternative.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1011, provides no disqualification from unemployment insurance benefits where a claimant leaves employment with good cause attributable to the actions of the employer or the conditions of employment. The facts established in the instant case will support a finding that the claimant's leaving the employment was for good cause within the meaning of Title 8, section 1001 (a)(b).

In the instant case the claimant chose the most reasonable alternative and she; therefore, voluntarily quit for good cause.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, but with good cause, within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1001. No disqualification is imposed based upon her separation from her employment with Complete Communications Installation, Inc. The claimant may contact the local office concerning the other eligibility requirements of the Law.

The determination of the Claims Examiner is affirmed.



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Van D. Caldwell  
Hearing Examiner

Date of hearing: 12/23/92  
rc/Specialist ID: 07204  
Copies mailed on 12/31/92 to:

Claimant  
Employer  
Unemployment Insurance - College Park - MABS