

 **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.:	1013-BR-92	
	Date:	June 26, 1992	
Claimant:	Carrie Pearson	Appeal No.:	9207946
		S. S. No.:	
Employer:	Annapolis Life Care, Inc. c/o Gibbens Company ATTN: Cynthia Schroeder	L. O. No.:	2
		Appellant:	CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 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.

THE PERIOD FOR FILING AN APPEAL EXPIRES July 26, 1992

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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.

The Board makes the following findings of fact, based upon the Board's own evaluation of the credibility of the testimony.

The claimant worked as a part-time dietary aide from September 30 until February 27, 1992. She resigned primarily because she believed the job was too strenuous. The claimant has a heart condition which precludes her from any substantial lifting, or repetitive pushing or climbing. The claimant did not reveal the fact that she had a heart condition to her employer at the time that she was hired. At the time, however, the claimant believed that her duties would not involve any substantial lifting, and that she could perform what lifting was required.

The claimant complained to her supervisor when it became apparent that she had to do substantial repetitive lifting. She was told that this was the job and that she could either take it or leave it. She asked a higher supervisor on one occasion if lighter work was available, and she was told no. The employer does have light work available, for those who become unable to do heavier work, but only for temporary and sporadic periods.

The claimant clearly has a serious medical problem which affected her ability to do the work. She did not conceal this condition, nor did she have any reason to believe that the job duties were beyond her capacity. The Hearing Examiner disqualified the claimant on the theory that the claimant had a reasonable alternative to quitting, but the Board disagrees. The alternatives mentioned by the employer were entirely theoretical, and they did not materialize on the one occasion when the claimant did mention her problem.

The claimant left her employment for a serious medical problem which left her no reasonable alternative but to leave the employment. Since the claimant's reason for leaving is personal (as the medical condition was pre-existing and not caused or aggravated by the work) the claimant does not have "good cause" for leaving the work. But since the claimant had no reasonable alternative, the claimant does have "valid circumstances," and a lesser penalty will be imposed.

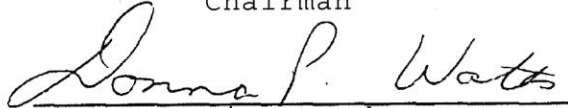
#### DECISION

The claimant left work voluntarily, without good cause but for valid circumstances, within the meaning of Section 8-1001 of the Labor and Employment Article. She is disqualified

from receiving benefits from the week beginning February 23, 1992 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

  
Chairman

  
Associate Member

K:DW

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - GLEN BURNIE



# Maryland

## Department of Economic & Employment Development

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

*Gary W. Wiedel, Administrator*  
*Louis Wm. Steinwedel, Chief Hearing Examiner*

*Room 511*  
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### — DECISION —

Date:	Mailed:	5/8/92
Claimant:	Appeal No.:	9207946
Carrie B. Pearson	S. S. No.:	
Employer:	L.O. No.:	002
Annapolis Life Care, Inc. c/o Gibbens Company	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.

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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

May 26, 1992

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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### — APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Laurie Williams,  
Health Center  
Coordinator

Nick Beschen,  
Food & Beverage  
Director

Cynthia Schroder,  
Gibbens Company

## FINDINGS OF FACT

The claimant worked as a part-time dietary aide from September 30, 1991 until February 27, 1992. She resigned because she was required to work weekends and she believed that she was not hired to work weekends. She also primarily resigned because she felt that the job was too strenuous. The claimant had a cardiac condition which she failed to disclose to the employer when she was hired although such information was requested on a employment health status form. The claimant also never disclosed throughout her employment to the employer that she was having problems because of her medical condition. She did not anticipate that she would be required to lift heavy trays of glasses and containers of silverware. She thought that she would just be setting the tables.

Prior to resigning, she did not however inform her manager that she was having difficulty because of health reasons and/or seek alternative job assignments. Light duty may have been available particularly on a short-term basis or the personnel office could have kept the claimant in mind for office or clerical work in another department.

## CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1001 provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause or valid circumstances, within the meaning of Title 8, Section 1001.

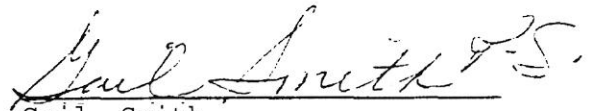
The claimant took this position not knowing that some lifting would be involved. On the other hand the employer hired the claimant not knowing that the claimant had a medical condition which may have prevented the claimant from performing the position. Once the claimant saw that she had some difficulties performing the position, the claimant never came forward to discuss her medical condition and possibly an alternative type of position or light duty with the employer prior to resigning.

The determination of the Claims Examiner will be affirmed.

## DECISION

The unemployment of the claimant was due to her voluntarily leaving work, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001. Benefits are denied for the week beginning February 23, 1992 and until the claimant becomes re-employed and earns at least ten times her weekly benefit amount (\$780) and t-hereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is affirmed.



Gail Smith  
Hearing Examiner

Date of Hearing: 5/5/92  
ps/Specialist ID: 02411  
Cassette No: Attached to File  
Copies mailed on 5/8/92 to:

Claimant  
Employer  
Unemployment Insurance - Glen Burnie (MABS)