

**- DECISION -**

Claimant:  
PARVEZ AKHTAR

Decision No.: 1066-BR-13

Date: April 24, 2013

Appeal No.: 1238716

S.S. No.:

Employer:  
FABER COE & GREGG INC

L.O. No.: 65

Appellant: Claimant

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

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**- NOTICE OF RIGHT OF APPEAL TO COURT -**

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: May 24, 2013

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the following findings of fact and reverses the hearing examiner's decision.

The claimant was employed as a full-time sandwich maker from April 17, 2012 through April 26, 2012. The claimant is unemployed as the result of a voluntary quit.

During the claimant's short tenure, he was unreasonably verbally berated and shouted at by his supervisor. On one of these occasions, the supervisor told the claimant that he was, "fucking dumb". There was no other higher management authority to whom the claimant

could complain. As a result of the claimant's treatment by his supervisor, with no prospect for change, the claimant voluntarily quit.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*; *COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

"Due to leaving work voluntarily" has a plain, definite and sensible meaning, free of ambiguity. It expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally and of his or her own free will, terminated the employment. *Allen v. Core Target Youth Program, 275 Md. 69 (1975)*. A claimant's intent or state of mind is a factual issue for the Board of Appeals to resolve. *Dept. of Econ. & Empl. Dev. v. Taylor, 108 Md. App. 250, 274 (1996)*, *aff'd sub. nom., 344 Md. 687 (1997)*. An intent to quit one's job can be manifested by actions as well as words. *Lawson v. Security Fence Supply Company, 1101-BH-82*. In a case where medical problems are at issue, mere compliance with the requirement of supplying a written statement or other documentary evidence of a health problem does not mandate an automatic award of benefits. *Shifflet v. Dept. of Emp. & Training, 75 Md. App. 282 (1988)*.

There are two categories of non-disqualifying reasons for quitting employment. When a claimant voluntarily leaves work, he has the burden of proving that he left for good cause or valid circumstances based upon a preponderance of the credible evidence in the record. *Hargrove v. City of Baltimore, 2033-BH-83*; *Chisholm v. Johns Hopkins Hospital, 66-BR-89*.

Quitting for "good cause" is the first non-disqualifying reason. *Md. Code Ann., Lab. & Empl. Art., § 8-1001(b)*. Purely personal reasons, no matter how compelling, cannot constitute good cause as a matter of law. *Bd. Of Educ. Of Montgomery County v. Paynter, 303 Md. 22, 28 (1985)*. An objective standard is used to determine if the average employee would have left work in that situation; in addition, a determination is made as to whether a particular employee left in good faith, and an element of good faith is whether the claimant has exhausted all reasonable alternatives before leaving work. *Board of Educ. v. Paynter, 303 Md. 22, 29-30 (1985)* (requiring a "higher standard of proof" than for good cause because reason is not job related); *also see Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984)*. "Good cause" must be job-related and it must be a cause "which would reasonably impel the average, able-bodied, qualified worker to give up his or her employment." *Paynter, 303 Md. at 1193*. Using this definition, the Court of Appeals held that the Board correctly applied the "objective test": "The

applicable standards are the standards of reasonableness applied to the average man or woman, and not to the supersensitive." *Paynter*, 303 Md. at 1193.

The second category or non-disqualifying reason is quitting for "valid circumstances". *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(1)*. There are two types of valid circumstances: a valid circumstance may be (1) a substantial cause that is job-related or (2) a factor that is non-job related but is "necessitous or compelling". *Paynter* 202 Md. at 30. The "necessitous or compelling" requirement relating to a cause for leaving work voluntarily does not apply to "good cause". *Board of Educ. v. Paynter*, 303 Md. 22, 30 (1985). In a case where medical problems are at issue, mere compliance with the requirement of supplying a written statement or other documentary evidence of a health problem does not mandate an automatic award of benefits. *Shifflet v. Dept. of Emp. & Training*, 75 Md. App. 282 (1988).

Section 8-1001 of the Labor and Employment Article provides that individuals shall be disqualified from the receipt of benefits where their 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, valid circumstances. A circumstance for voluntarily leaving work is valid if it is a substantial cause that is directly attributable to, arising from, or connected with the conditions of employment or actions of the employing unit or of such necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment.

In the instant case, the employer, duly notified of the date, time and place of the hearing, failed to appear. Because the employer was not present, no evidence in mitigation was presented. The Board finds the claimant's testimony credible and uncontradicted. When weighing the evidence, the Board must view it in favor of coverage and strictly construe disqualification provisions. The Board finds sufficient evidence that the claimant's workplace environment was intolerable. The reasonable person in the claimant's position would have been compelled to voluntarily quit. The claimant's reasons for quitting arose from the conditions of employment and the actions of the employer.

The Board does not adopt the hearing examiner's opinion that the treatment the claimant received was not "overly" abusive or constant. The Board finds that the supervisor's actions toward the claimant was abusive – the Board declines to grade the abuse on a scale of severity especially in the absence of any mitigating testimony from the employer.

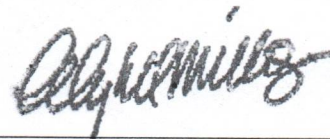
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant met his burden of demonstrating that he quit for good cause within the meaning of § 8-1001. The hearing examiner's valid circumstances decision shall be reversed and a finding of good cause shall be found for the reasons stated herein. No disqualification shall be imposed, provided the claimant meets the other requirements of the law.

**DECISION**

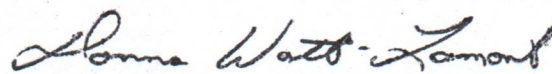
It is held that the claimant voluntarily quit for good cause connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8 Section 1001. No disqualification is imposed based upon the claimant's separation from employment with FABER COE & GREGG INC.

The Hearing Examiner's decision is reversed.



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Clayton A. Mitchell, Sr., Associate Member



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Donna Watts-Lamont, Chairperson

KJK

Copies mailed to:

PARVEZ AKHTAR

FABER COE & GREGG INC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

PARVEZ AKHTAR

SSN #

**Claimant**

vs.

FABER COE & GREGG INC

**Employer/Agency**

Before the:

**Maryland Department of Labor,  
Licensing and Regulation**

**Division of Appeals**

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1238716

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

December 28, 2012

**For the Claimant: PRESENT**

**For the Employer:**

**For the Agency:**

**ISSUE(S)**

Whether the claimant's separation from this employment was for a disqualifying reason within the meaning of the MD. Code Annotated, Labor and Employment Article, Title 8, Sections 1001 (Voluntary Quit for good cause), 1002 - 1002.1 (Gross/Aggravated Misconduct connected with the work), or 1003 (Misconduct connected with the work).

**FINDINGS OF FACT**

The claimant, Parvez Akhtar, began working for this employer, Faber Coe & Gregg, Inc., on April 17, 2012. At the time of separation, the claimant was working as a sandwich maker. The claimant last worked for the employer on April 26, 2012, before quitting.

The claimant resigned after his employer frequently berated him, calling him on one occasion, "fucking dumb." The only person that the claimant could have expressed his concerns to was his boss. He did express his concerns to his boss but the treatment did not stop. The claimant's employer was generally rude, but not abusive. The claimant resigned.

## CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual is disqualified from receiving benefits when unemployment is due to leaving work voluntarily. The Court of Appeals interpreted Section 8-1001 in Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975): "As we see it, the phrase 'leaving work voluntarily' has a plain, definite and sensible meaning...; it expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment." 275 Md. at 79.

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual shall be disqualified for benefits where 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 valid circumstances. A circumstance is valid only if it is (i) a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit; or (ii) of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment.

## EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

The claimant had the burden to show, by a preponderance of the evidence, that he voluntarily quit his position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. Hargrove v. City of Baltimore, 2033-BH-83. In this case, this burden has been met.

The claimant offered credible testimony that his boss was generally rude and on once occasion asked him if he was "fucking dumb." The claimant expressed his concerns about such treatment to his boss, but no accommodations were made.

The claimant resigned with valid circumstances. However, because the treatment was not overly abusive or constant, good cause is not warranted.

## DECISION

IT IS FURTHER HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning April 29, 2012 and for the four weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at [ui@dllr.state.md.us](mailto:ui@dllr.state.md.us) or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.

*H Abromson*

H Abromson, Esq.  
Hearing Examiner

### **Notice of Right to Request Waiver of Overpayment**

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

**A request for waiver of recovery of overpayment does not act as an appeal of this decision.**

**Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.**

### **Notice of Right of Further Appeal**

Any party may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by January 14, 2013. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals  
1100 North Eutaw Street  
Room 515  
Baltimore, Maryland 21201  
Fax 410-767-2787  
Phone 410-767-2781

**NOTE:** Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: December 07, 2012

CH/Specialist ID: USB5F

Seq No: 003

Copies mailed on December 28, 2012 to:

PARVEZ AKHTAR  
FABER COE & GREGG INC  
LOCAL OFFICE #65