-DECISION-

Claimant:
CARLA M CHASE DOUGLAS

Employer:
TIME REALTY INC

Decision No.: 1067-BR-14

Date: April 23, 2014

Appeal No.: 1332699

S.S. No.:

L.O. No.: 60

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.

- 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 22, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. Howeve,r the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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)*.

A threshold issue in this case is whether the claimant voluntarily quit or whether the claimant was discharged.

The burden of proof in this case is allocated according to whether the claimant voluntarily quit or whether the employer discharged the claimant. In a discharge case, the employer has the burden of demonstrating that the claimant's actions rise to the level of misconduct, gross misconduct or aggravated misconduct based upon a preponderance of the credible evidence in the record. *Hartman v. Polystyrene Products Co., Inc., 164-BH-83*; *Ward v. Maryland Permalite, Inc., 30-BR-85*; *Weimer v. Dept. of Transportation, 869-BH-87*; *Scruggs v. Division of Correction, 347-BH-89*; *Ivey v. Catterton Printing Co., 441-BH-89*.

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*. 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 (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 (1985); also see Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984)*. 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 (1985)*.

The intent to voluntarily quit can be manifested by words or actions. "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. 250(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*. A resignation submitted in response to charges which *might* lead to discharge is a voluntary quit. *Hickman v. Crown Central Petroleum Corp., 973-BR-88*.

The intent to discharge also can be manifested by actions as well as words. The issue is whether the reasonable person in the position of the claimant believed in good faith that he was discharged. *See Dei Svaldi v. Martin Taubenfeld, D.D.S., P.A., 1074-BR-88* (the claimant was discharged after a telephone conversation during which she stated her anger at the employer and the employer stated to her, "If that's the way you feel, then you might as well not come in anymore." The claimant's reply of "Fine" does not

make it a quit). *Compare, Lawson v. Security Fence Supply Company, 1101-BH-82.* A quit in lieu of discharge is a discharge for unemployment insurance purposes. *Tressler v. Anchor Motor Freight, 105-BR-83.*

In this case, the Board finds the claimant did not have the requisite intent to quit her employment. The employer initiated the separation when the claimant did not return to work as expected and had not communicated with her manager. The Board concludes that the claimant was discharged by the employer.

In a discharge case, the employer has the burden of demonstrating that the claimant's actions rise to the level of misconduct, gross misconduct or aggravated misconduct based upon a preponderance of the credible evidence in the record. *Hartman v. Polystyrene Products Co., Inc., 164-BH-83*; *Ward v. Maryland Permalite, Inc., 30-BR-85*; *Weimer v. Dept. of Transportation, 869-BH-87*; *Scruggs v. Division of Correction, 347-BH-89*; *Ivey v. Catterton Printing Co., 441-BH-89.* Conclusory statements are insufficient evidence to meet an employer's burden of proof. *Cook v. National Aquarium in Baltimore, 1034-BR-91.* An employer must produce specific evidence of a claimant's alleged misconduct. *Id.*

> As the Court of Appeals explained in *Department of Labor, Licensing and Regulation v. Hider, 349 Md. 71, 82, 706 A.2d 1073 (1998)*, "in enacting the unemployment compensation program, the legislature created a graduated, three-tiered system of disqualifications from benefits based on employee misconduct. The severity of the disqualification increases in proportion to the seriousness of the misconduct."

Dept. of Labor, Licensing & Regulation v. Boardley, 164 Md. 404, 408 fn.1 (2005).

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises, within the meaning of Section 8-1003 of the Labor and Employment Article. (*See, Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113*).

Simple misconduct within the meaning of *§8-1003* does not require intentional misbehavior. *DLLR v. Hider, 349 Md. 71 (1998).* Misconduct must be connected with the work; the mere fact that misconduct adversely affects the employer's interests is not enough. *Fino v. Maryland Emp. Sec. Bd., 218 Md. 504 (1959).* Although not sufficient in itself, a breach of duty to an employer is an essential element to make an act connected with the work. *Empl. Sec. Bd. v. LeCates, 218 Md. 202 (1958).* Misconduct, however, need not occur during the hours of employment or the employer's premises. *Id.*

Without sufficient evidence of a willful and wanton disregard of an employee's obligations or gross indifference to the employer's interests, there can be no finding of gross misconduct. *Lehman v. Baker*

Protective Services, Inc., 221-BR-89. Where a showing of gross misconduct is based on a single action, the employer must show the employee demonstrated gross indifference to the employer's interests. *DLLR v. Muddiman, 120 Md. App. 725, 737 (1998).*

In determining whether an employee has committed gross misconduct, "[t]he important element to be considered is the nature of the misconduct and how seriously it affects the claimant's employment or the employer's rights." *Dept. of Econ. & Empl. Dev. v. Jones, 79 Md. App. 531, 536 (1989).* "It is also proper to note that what is 'deliberate and willful misconduct' will vary with each particular case. Here we 'are not looking simply for substandard conduct…but for a willful or wanton state of mind accompanying the engaging in substandard conduct." *Employment Sec. Bd. v. LeCates, 218 Md. 202, 207 (1958)*(internal citation omitted); *also see Hernandez v. DLLR, 122 Md. App. 19, 25 (1998).*

In her appeal, the claimant offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner's decision. The claimant contends the hearing examiner erred in not allowing her witnesses to testify. She states: "The hearing examiner told me that he didn't need to speak with my witnesses because he already knows what they are going to say. At that time I knew that I wasn't going to get a fair hearing." The claimant also asks that the recording of the hearing be subpoenaed for evidence and requests a new hearing before the Board. The claimant otherwise does not cite to the evidence of record and makes no other contentions of error.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered closing statements. It was not error for the hearing examiner to decline to take testimony from the claimant's purported witnesses. One witness, the claimant's mother, only would have been able to offer first-hand testimony about a point which was not at issue. No evidence was needed on that topic. The other witness, the claimant's husband, only would have been able to reiterate what the claimant had told him. He had no first-hand information. The hearing examiner had the claimant's first-hand, direct testimony. It would have been duplicative of that evidence to have taken the hearsay testimony from either the claimant's mother or her husband. The hearing examiner properly excluded testimony which would have provided no new, useable facts and which was unnecessary hearsay. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. The Board notes that the recording of the Lower Appeals hearing is already part of the record in this matter. The claimant's request for a new hearing is denied.

The Board has thoroughly reviewed the record from the hearing. The greater weight of evidence established that the claimant was discharged by the employer for failing to return to work following an approved leave and failing to maintain contact with her manager.

The claimant did speak to someone else at the employer's business a few times after she left for her leave. She did not, however, make a diligent attempt to reach her manager, or another member of management, until several days had passed. The claimant had telephone numbers for the people she needed to contact,

but she did not pursue this contact as would be expected of someone attempting to preserve her employment. The claimant knew she had been granted three days of leave. The claimant knew she was expected to return to work at the end of that leave or to contact the employer for additional time. The claimant's failure to do either of these things was either an act in deliberate disregard for the employer's expectations, or it was indicative of gross negligence. The Board concludes that the discharge was for gross misconduct under Maryland law.

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 employer has met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of *§8-1002*. The decision shall be reversed for the reasons stated herein.

DECISION

It is held that the claimant was discharged for gross misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002. The claimant is disqualified from receiving benefits from the week beginning August 25, 2013, and until the claimant becomes re-employed, earns at least twenty five times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr., Associate Member

KP/MW
Copies mailed to:
CARLA M. CHASE DOUGLAS
TIME REALTY INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

CARLA M CHASE DOUGLAS

SSN #

Claimant

vs.

TIME REALTY 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: 1332699
Appellant: Employer
Local Office : 60 / LARGO

December 11, 2013

For the Claimant: PRESENT

For the Employer: PRESENT, LINDA GOLDBERG, REBECCA ELGART, JOAN BIRCHFIELD

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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant, Carla Chase Douglas, began working for this employer, Time Realty Inc., on August 30, 2012. At the time of separation, the claimant was working full-time as a leasing specialist. The claimant last worked for the employer on August 27, 2013, before voluntarily quitting when she failed to return back to work after bereavement leave.

On August 27, 2013, the claimant learned while at work that her brother had passed away. The claimant's supervisor, Joan Birchfield, told the claimant to take the three day bereavement leave and to let them know when she would be coming back. The claimant was also informed she could use other leave if she had the leave. The claimant left the office and later returned to pick up her car. The claimant then left town on August 28, 2013, to attend to her brother's funeral and arrangements. The claimant called the office

someday thereafter and spoke with Charnell, an office worker. The claimant left word with Charnell to let Ms. Birchfield know she called. The claimant did not make any requests for additional leave. On September 3, 2013, the claimant received text message from Ms. Birchfield to contact her. The claimant attempted to contact Ms. Birchfield at a secondary office which was also the office where Charnell worked. The claimant learned Ms. Birchfield was not at that office but she called the office of Ms. Birchfield and was informed she was at another office. The claimant contacted that office and spoke with Charnell. Despite these contacts with Charnell, Ms. Birchfield and management had not received any direct contact from the claimant. Ms. Birchfield had not received any messages from the claimant nor was any messages left for her by the claimant. The claimant had been provided Ms. Birchfield's direct work number as well as her cell number. Yet, Ms. Birchfield had not received any contact directly from the claimant. Ms. Birchfield sent a text to the claimant on Saturday, August 31, 2013, but did not receive any response. Ms. Birchfield had attempted to get in contact with the claimant but was unable to reach her. The employer waited until September 5, 2013, before it proceeded with separating the claimant. According to policy, an employee that fails to report for work without any notification to their Manager for any two (2) days, whether consecutive or non-consecutive, the employer considers that to be job abandonment. (Employer Ex. 1) At some point, the employer realized that all of the claimant's belongings had disappeared from the office. While the employer was not sure who had removed the claimant's belongings, the employer assumed the claimant had come through and removed her belongings, further indicating a belief she was quitting. After not hearing from the claimant after she left on August 27, 2013, the employer executed a termination of employment letter effective September 5, 2013, in accordance with their policy.

CONCLUSIONS OF LAW

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.

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.

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 she voluntarily quit her 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 not been met.

The claimant voluntarily quit when she failed to return back to work after a leave of absence. The claimant argued that she had intended to return back to work and that the employer separated her before she could return. The claimant was only allowed three days bereavement with the understanding that she could use additional days of leave if she had it available. No evidence was presented that she had additional days of leave. No evidence was presented that the claimant requested additional days of leave. The claimant presented that she made a number of phone contacts to the employer and spoke with an employee named Charnell. While that may be the case, policy indicates that the claimant would have needed to provide notification to her manager. The claimant never contacted her manager directly. The claimant indicated she attempted to contact Ms. Birchfield, her manager. However, Ms. Birchfield credibly indicated that the claimant had a number of contacts for her and that she did not receive any calls or text message or voicemails from the claimant. Further, to the extent the claimant had attempted to reach Ms. Birchfield through Charnell, the claimant never made a request for additional days off to be presented on her behalf. The claimant also could have reported to the office upon return from out of town to speak directly with Ms. Birchfield and management. That did not take place. Based upon the facts, the claimant is the moving party causing the separation since she failed to return to work after the bereavement leave. Therefore, the separation is deemed a voluntary quit. The reason for the leave was personal in nature and not connected with the conditions of employment. Therefore, good cause cannot be found for the voluntary quit. The claimant's reason for not returning and ultimately quitting was compelling as she was dealing with the death of her brother. Notwithstanding the claimant did not investigate all reasonable alternatives in order to preserve the employment. The claimant should have contacted her manager directly to request additional time off work.

I hold the claimant's voluntary quit was without good cause or valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1001 pursuant to this separation from this employment.

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause or valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are denied for the week beginning August 25, 2013, and until the claimant becomes reemployed and earns at least 15 times the claimant's weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the claimant.

The determination of the Claims Specialist is reversed.

W E Greer, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 December 26, 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: November 25, 2013
DAH/Specialist ID: UTW1K
Seq No: 001
Copies mailed on December 11, 2013 to:

CARLA M. CHASE DOUGLAS
TIME REALTY INC
LOCAL OFFICE #60