

**- DECISION -**

Claimant:  
JEFFREY L MINKOVICH

Decision No.: 1089-BR-11

Date: February 25, 2011

Appeal No.: 1023475

Employer:  
CREATIVE HOST SERVICES INC

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.

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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: March 28, 2011

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**REVIEW ON THE RECORD**

After a review on the record, the Board makes the following findings of fact and conclusions of law. The Board reverses the hearing examiner's decision.

The claimant began working as a unit operations manager for the employer on March 1, 2009. The claimant voluntarily quit his employment because the job he was originally hired to perform was substantially changed and he could not perform his new duties appropriately.

The claimant was hired as a manager for the employer's Ram's Head restaurant airport location. The claimant performed his duties exceptionally.

In January, 2010, the employer transferred the claimant to another location, supervising three different restaurants. The claimant was not given a choice as to whether he could stay at the Rams Head location or be transferred. Because the claimant did not want to lose a job that he liked and that he was excelling at, he opted to move at the employer's behest. The claimant's hours supervising these three locations increased from approximately 65 hours a week to 80 hours a week. The claimant was earning the same salary managing one restaurant as he was supervising three restaurants.<sup>1</sup>

After a discussion with his supervisors regarding his inability to perform his duties adequately supervising three restaurants, the employer moved him in March, 2010 to Bill Bateman's -- another restaurant at the airport. However, the claimant's request that he be transferred to his original location (the Rams Head) fell on deaf ears.

The claimant was having difficulty with the management and staff at his new restaurant. He was unable to fire the managers. The staff was inefficient; they also failed to adhere to the attendance policy. Because of this poor management and staff, the claimant continued to work 80 hours a week.

On March 23, 2010, the claimant informed his general manager that he wanted to be moved back to the original location he was hired to supervise. The manager told him he could not. The claimant then told his supervisor that he was giving his notice that he would be leaving his employment. The claimant informed the supervisor that his last day would be June 1, 2010. He gave the employer this amount of time because he knew that they would need to train a new employee. The employer opted, instead, to tell the claimant that he could leave after two weeks.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

"Due to leaving work voluntarily" has a plain, definite and sensible meaning, free of ambiguity. It

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<sup>1</sup> The claimant has been diagnosed as HIV positive. He did not use his medical condition as an excuse for his voluntarily quitting his employment. He only used it as an example to show that the substantial change in his duties caused a detriment to his health. Claimant's argument is not that he is medically unable to work, nor that his medical diagnosis was the cause of his leaving employment, but the employer's unreasonably disallowing him to return to the duties that he was hired to perform was the reason he voluntarily quit his employment.



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.

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.

A substantial detrimental change in working conditions can constitute good cause for voluntarily quitting employment. See *Rockstroh v. Brocatto's Restaurant*, 54-BH-86; *Johnson v. Gladenia, Inc.*, 702-BR-91; *Brown v. James Jenkins, Jr.*, 1890-BR-92.

A substantial change in the agreed-upon hours of employment may constitute good cause, *DiBartolemeo v. Yaffe and Company of Baltimore, Inc.*, 1089-BH-89, *Heavner v. Auto Trader Company*, 195-BR-90, *Phillips v. Loughlin Security Agency, Inc.*, 2116-BH-92, or valid circumstances if for compelling personal reasons, *Johnson v. Direct Housekeeping*, 183-BR-86.

The employer had one witness at the Lower Appeals Division hearing. That witness was a regional human resources manager for the employer. The witness had absolutely no first-hand knowledge of the claimant's file, illness, or job duties. The witness did not even know the claimant. The only testimony that the witness had to offer at the hearing was that "if she had only known" she would have been able to assist the claimant in how to proceed.

However, the claimant dealt with his employment situation with the management that he knew—his immediate supervisors. His reasonable requests to be transferred back to his original position were ignored. Further, the substantial change in the claimant's duties caused his health to suffer. The Board finds that the substantial detrimental change in the claimant's working condition and agreed upon hours of work constitute good cause for the claimant voluntarily quitting employment.

The Board finds based on a preponderance of the credible evidence that the claimant met his burden of demonstrating that he quit this employment for good cause within the meaning of § 8-1001. The decision shall be reversed for the reasons stated herein.

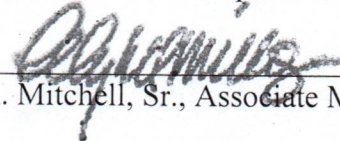
### DECISION

It is held that the claimant voluntarily quit, but 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 CREATIVE HOST SERVICES, INC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mr

Copies mailed to:

JEFFREY L. MINKOVICH  
CREATIVE HOST SERVICES INC  
MARY T KEATING ESQ.  
GAYLE TUREK  
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Susan Bass, Office of the Assistant Secretary



## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

JEFFREY L MINKOVICH

SSN #

**Claimant**

vs.

CREATIVE HOST SERVICES 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: 1023475

Appellant: Claimant

Local Office : 60 / TOWSON CALL  
CENTER

August 03, 2010

**For the Claimant:** PRESENT , MARY T KEATING, ESQ.

**For the Employer:** PRESENT , GAYLE TUREK, ERICA STEVENS

**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 began working for this employer on March 1, 2009, and his last day worked was March 25, 2010. At the time of his voluntary quit, the claimant worked full-time as a unit operations manager, earning an annual salary of \$50,000.00.

The claimant voluntarily quit this employment because his health was deteriorating. The claimant was initially assigned to supervise the employer's restaurants at the Ram's Head airport location. However, in January 2010, the employer transferred the claimant to another location supervising three different restaurants. The claimant's hours increased by approximately 10 more hours per week because the other restaurants were not as organized and there were more issues with staff not reporting to work.



The claimant is HIV positive and he complained to the interim general manager that the increase in hours was adversely affecting his health. The claimant was then given the option to transfer to the Bill Bateman's location or remain where he was. The claimant opted to transfer to the Bill Bateman location, but his hours were still more than he desired. The claimant informed the interim manager he would quit if he was not transferred back to the Ram's Head location. The claimant was not transferred to that location, and as a result, he quit.

The claimant also quit because his doctor advised him to seek other employment that was less strenuous. However, the claimant submitted no medical documentation at the hearing. Although the claimant complained to the interim manager, he at no point raised his concerns to human resources, even though he was well aware that human resources maintains an open door policy and has an emergency number for dealing with employee concerns.

### CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001, states 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 the actions of the employer, or without valid circumstances. A circumstance is valid only if it is (i) a substantial cause directly attributable to, arising from, or connected with conditions of employment or the actions of the employing unit; or (ii) of such necessitous or compelling nature the individual has no reasonable alternative other than leaving the employment.

### EVALUATION OF THE EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, he/she voluntarily quit his position with this employer for reasons which constitute either good cause or valid circumstances, pursuant to the Maryland Unemployment Insurance Law. (Hargrove v. City of Baltimore, 2033-BH-83). In the case at bar, the claimant did not meet this burden.

To establish good cause, the claimant must show the cause for leaving is directly attributable to, arising from or connected with the conditions of the employment or the actions of the employer. Purely personal reasons, no matter how compelling they may be, cannot constitute good cause. [Board of Education of Montgomery County v. Paynter, 303 Md. 22, 491 A.2d 1186 (1985)]. An employee's health problem is considered to be connected with the work only if it results from an on-the-job injury or if it is caused by a reaction to some unusual item used in the work place. Other health problems are generally not considered to be connected with the employment and therefore are not good cause for resigning, even if the health problems prevent the employee from doing his job. "Where a claimant has a chronic ailment, and where conditions in the workplace are such that healthy persons are not usually affected, the claimant's medical problem is not considered connected with the conditions of employment." (Ortiz v. Trappe Packing Corporation, 924-BR-92). Nonetheless, in Washington v. University of Maryland Medical System, 1079-BR-91, the Board of Appeals held "The claimant voluntarily quit for valid circumstances when he had serious, documented medical reasons for leaving the job. The only alternative available to the claimant was an unpaid leave of absence. The Board has held that an unpaid leave of absence for an indefinite period of



time is not a reasonable alternative under Section 8-1001. Since the claimant had no reasonable alternative, he had valid circumstances for leaving.”

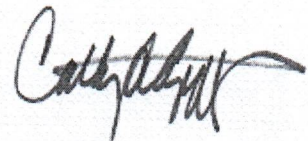
In the case at bar, the evidence shows the claimant quit because his health was deteriorating and he was unable to work his regular schedule. As a unit operations manager, the claimant could be transferred to other locations if necessary. When the claimant complained to the interim manager, he was given the option to transfer to another location, which he did. However, the claimant quit because he was not transferred to his original location. Moreover, as a unit operations manager, it was the claimant's duty to help better organize restaurants, including hiring and/or firing employees if necessary. Finally, as a unit operations manager, the claimant was aware of the employer's policy regarding bringing concerns, such as the claimant had, to the attention of the human resources department. The human resources department was unaware of the claimant's concerns, and as a result, could not offer assistance to him. The claimant did not submit medical documentation at the hearing and therefore failed to establish that his leaving was connected in any way to his medical condition. Therefore, the claimant has failed to establish good cause or valid circumstances for voluntarily leaving this employment.

Accordingly, the claimant did not meet his burden in this case and the claimant's voluntary quit was not for good cause or due to a valid circumstance. Benefits are, therefore, denied.

### 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 May 23, 2010, 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 modified.



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C A Applefeld, 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 August 18, 2010. 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 : July 19,2010  
CH/Specialist ID: UTW2D  
Seq No: 003  
Copies mailed on August 03, 2010 to:  
JEFFREY L. MINKOVICH  
CREATIVE HOST SERVICES INC  
LOCAL OFFICE #60  
MARY T KEATING ESQ.  
GAYLE TUREK  
AU BON PAIN #15123