

**- DECISION -**

Claimant:  
MICHELLE WILLIAMS

Decision No.: 1190-BR-14

Date: May 14, 2014

Appeal No.: 1329209

S.S. No.:

Employer:  
PRINCE GEORGES BOARD EDUCATION

L.O. No.: 63

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: June 13, 2014

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant was aware of the availability of leave under the FMLA, but elected to not pursue this course. The claimant knew residential housing for herself and her family was beyond her financial means in any area near her employment.

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)*.

“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 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 reiterates much of her testimony from the hearing. She contends it would have been pointless to apply for FMLA knowing she would not be able to find housing and return to her employment. 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. 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. Sufficient evidence exists in the record from which the Board may make its decision.

The Board has thoroughly reviewed the record from the hearing but disagrees with the hearing examiner's conclusions of law. The claimant, under these circumstances, was not required to apply for leave under the FMLA. The claimant reasonably concluded she would not be able to find affordable housing and return to this employment. The law does not require individuals to engage in acts of futility for the sole purpose of meeting some requirement. A claimant is only expected to pursue these other options when there is some possibility of success. Here, the claimant already knew what housing cost, what was available, and what her resources were. She did not need to engage in some fruitless exploration of all this prior to leaving her employment. The Board finds the claimant's conclusion to have been reasonable. Further, the Board finds the claimant was compelled, for personal reasons, to leave this employment. The claimant has established that she had valid circumstances for quitting her position with this 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 did not meet her burden of demonstrating that she quit this employment for good cause within the meaning of §8-1001. However the claimant has established that she had valid circumstances for quitting. The claimant is disqualified from receiving benefits for the week beginning June 2, 2013, and for the next four weeks thereafter. The decision shall be reversed for the reasons stated herein.

The employer, provided that the employer has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Empl. Art., §8-616, et seq.*, should note that any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. See *Md. Code Ann., Lab. & Empl. Art., §8-611(e)(1)*.

### DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause but with valid circumstances, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. The claimant is disqualified from receiving benefits from the week beginning June 2, 2013, and for the four weeks immediately following.

The Hearing Examiner's decision is reversed.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

MICHELLE WILLIAMS  
PRINCE GEORGES BOARD EDUCATION  
PRINCE GEORGES BOARD EDUCATION  
Susan Bass, Office of the Assistant Secretary

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

MICHELLE WILLIAMS

SSN #

**Claimant**

Vs.

PRINCE GEORGES BOARD EDUCATION

**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: 1329209

Appellant: Claimant

Local Office : 63 / CUMBERLAND  
CLAIM CENTER

December 04, 2013

**For the Claimant:** PRESENT, NATHANIEL GRIFFIN

**For the Employer:** PRESENT, ROLAND OTEY

**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 (Michelle Williams) began working for this Employer (Prince George's County Board of Education) on October 10, 2011. At the time of separation, the Claimant was working as a Satellite Food Service Leader. The Claimant last worked for the Employer on June 7, 2013, before quitting as a result of her father's medical condition.

The Claimant's father had surgery in June 2013 for an abdominal mass. (Claimant's Exhibit 1). The Claimant's father had medical complications after his surgery. The Claimant's father had no one to help care for him in conjunction with his surgery and ongoing medical care. The Claimant's father lives in Baltimore and the Claimant had been living in Prince George's County. The Claimant did not advise the Employer of her father's medical condition and did not request a leave of absence or FMLA leave. The Claimant was eligible for a leave of absence and/or FMLA from the Employer. The Claimant was the sole

caretaker for her father and moved to Baltimore to provide necessary care for her father. The Claimant's father was released from his physician's care on October 17, 2013.

### 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.

Md. Code Ann., Labor & Emp. Article, Section 8-1001(c)(2) provides that an individual who leaves employment because of the health of the individual or another for whom the individual must care "shall submit a written statement or other documentary evidence of the health problem from a hospital or physician."

### 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 quit her job to act as the caretaker for her father. Prior to quitting her job, the Claimant failed to request a leave of absence or other accommodation from the Employer to retain her employment. The Employer produced evidence that the Claimant was eligible to request a leave of absence. The Claimant further did not advise the Employer of her father's medical condition prior to quitting her job. Consistent with Md. Code Ann., Labor & Emp. Article, Section 8-1001(c) (2), the Claimant provided medical documentation to evidence her father's medical condition. Unfortunately, the law further requires that the Claimant make reasonable efforts to retain her employment prior to quitting her job as a result of the health of herself or another. In the instant case and in contrast, the Claimant failed to ask the Employer for a leave of absence or other accommodation prior to quitting her job. Therefore, I can only find the Claimant's reason for quitting her job was not caused by conditions of her employment or that her reasons were of such



a compelling and necessitous nature that she had no reasonable alternative other than to sever from her employment at the time that she did.

It is thus determined that the Claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstance within the meaning of the sections of law cited above.

### 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 June 2, 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 modified.

*L. Williamson*

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L. Williamson, 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 19, 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: October 23, 2013

BLP:aeh/Specialist ID: WCU5U

Seq No: 001

Copies mailed on December 04, 2013 to:

MICHELLE WILLIAMS  
PRINCE GEORGES BOARD EDUCATION  
LOCAL OFFICE #63