

- DECISION -

Claimant:	Decision No.:	1245-BR-11
CHERYL L WESTCOTT	Date:	March 04, 2011
	Appeal No.:	1035455
	S.S. No.:	
Employer:	L.O. No.:	65
GREGG NECK BOAT YARD INC	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: April 04, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the following findings and facts and conclusions of law. The decision of the hearing examiner is reversed.

The claimant was employed as the office manager for the employer Gregg Neck Boat Yard, Inc. ("Boat Yard"). The claimant was married to the president/owner, G. Scott Westcott.

The claimant quit her job because of a physical altercation between Mr. Westcott and her on June 22, 2010. The claimant and her husband were having marital difficulties. A discussion of their marriage ensued on that day in the Boat Yard office which resulted in the altercation between them. The incident

was recorded by a video surveillance camera installed at the Boat Yard.¹ The claimant and Mr. Westcott subsequently separated on June 29, 2010, the date of the claimant's voluntarily quit.

The videotape clearly shows that the claimant and her husband were engaged in conversation. The claimant is sitting in an office chair; Mr. Westcott is standing in a superior posture over the claimant. The conversation then takes a serious turn, at which time Mr. Westcott places his hands on the claimant's shoulders in an attempt to restrain her in the chair below him. The claimant attempted to push his hands off her. Mr. Westcott also squeezes the claimant's neck at certain pressure points. He gathered her hair in the back, pulls it, pulling her head towards him. Mr. Westcott grabbed the claimant's legs, pulls her out of the office chair towards him and holds each of her legs on either side of his body. The claimant eventually escapes this hold by pushing Mr. Westcott away from her. However, Mr. Westcott continues to have the claimant cornered between the desk and her escape route.

Eventually, the claimant brushed past Mr. Westcott at which point she left the office, followed by Mr. Westcott. The two return seconds later; the claimant clears files off her desk, escapes past Mr. Westcott again, and leaves the office.

The claimant and her husband lived on a horse farm where the claimant boarded and cared for horses. The claimant managed this business as well; but it was not maintained as a business, it was merely a hobby that barely paid for itself. When the claimant and her husband separated, the claimant maintained the residence and horse farm. In his testimony, the husband alleges that the claimant quit to focus her attention on the horse farm business. The claimant, however, indicated in her testimony that the horse farm was not a business but that it was a leisurely pursuit that was barely self-sustaining.

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 expresses a clear legislative intent that to disqualify a claimant from benefits, the evidence must establish

¹ The video tape does not have audio. Therefore, the Board is unable to hear the discussion between the claimant and Mr. Westcott.

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. Quitting a job because the employer is subjecting him/her to harassment is generally for good cause.

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.

The claimant was physically...assaulted by her supervisor on the work premises during work hours. This constitutes good cause for leaving. *Torain v. Wackenhut Security*, 62-BR-87.

The fact that an employee does not immediately quit after being physically assaulted by her employer, when the assault in itself was a sufficient reason to establish good cause, does not mean that the reason she quit was not for good cause. *Lockhart v. Lyschick*, 300-BH-92.

In the present case, the Board must look at the relationship between the claimant and her employer as that of an employee/employer relationship. Although the Board takes into some consideration the fact that there is a personal relationship (husband and wife) between the two, the only consideration is whether a reasonable employee, in the same situation as the claimant, would have felt compelled to quit her job.

The claimant credibly testified that she left because her husband/employer consistently physically assaulted her in the office and that she could not maintain a normal employee relationship with him, given these continued assaults. In the June 22, 2010 videotape, it is apparent that the claimant is trying to get away from her husband/employer. She continues to push his hands off of her, many times to no avail. In fact, Mr. Westcott argued that the claimant was his wife and he could touch her whenever he wanted to touch her. The Board finds this statement incredulous. The fact that the two were in an office setting means that the relationship, at that moment, was a supervisor/employee relationship. The claimant continues to try to escape Mr. Westcott's advances. He continues to physically restrain the claimant. It is not until the claimant finally physically pushes Mr. Westcott away that she escapes the restraint of Mr. Westcott.

The Board finds that the incident was more severe than mere "horseplay" between a husband and wife, as the hearing examiner characterizes the altercation. The Board finds that the incident was the culminating cause of the claimant's voluntary quit. The fact that the claimant did not quit until a week following the incident, does not mean that the incident was not sufficient to establish good cause.

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

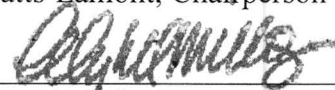
DECISION

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 GREGG NECK BOAT YARD, INC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mr

Copies mailed to:

CHERYL L. WESTCOTT
GREGG NECK BOAT YARD INC
GREGG NECK BOAT YARD INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

CHERYL L WESTCOTT

SSN #

Claimant

Vs.

GREGG NECK BOAT YARD 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: 1035455

Appellant: Employer

Local Office : 65 / SALISBURY

CLAIM CENTER

December 03, 2010

For the Claimant: PRESENT**For the Employer:** PRESENT, SCOTT WESCOTT, MERRICK HETTER, JAMES PYLES**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 worked at the Gregg Neck Boat Yard (the "Yard") from March 1986 through June 29, 2010. At separation, she shared ownership of the Yard with her husband and a third party, not involved in this matter, and she worked as a full time office manager, earning \$15.50 per hour. The claimant voluntarily quit her position to focus on running a horse-boarding business.

The claimant and her husband worked in a single, large office at the Yard. The claimant helped run the business, serving as bill and invoice payer. She kept her own schedule and set her own hours. Although neither could recall just when, a security camera was installed for safety, and was used by the claimant to confront her husband on June 29, 2010. That evening, the claimant asked her husband to meet her at a local bar and eatery. When he arrived, she claimed to have a tape of him mistreating her that she planned to use for a restraining order. When Mr. Westcott heard that, he paid the bill and left. The claimant, however,

claimed to be in fear for her life, and went directly to her attorney. She did not consult the police, but later revealed that this failure occurred because she and her husband were still married.

The claimant provided a soundless, visual recording of the Westcotts in their office. Although there was generalized horseplay, there was no apparent evidence that either party intended to injure the other. At one point, Mr. Westcott put his hands on either side of his wife's neck, but she did not significantly react to it, and he removed his hands and returned to his desk. The door to the office was open and the claimant could have left, but did not. The claimant's son, James Pyles, testified that his mother's marriage seemed normal to him, with no more problems than "anyone else's." The claimant did not return to the office after June 29, 2010 and now operates a horse's stable full time.

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." Allen, 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 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, that burden was not met.

The claimant did not quit because of managerial actions or workplace conditions. Likewise, she cited no compelling issues on which to base a claim of valid circumstances. The claimant quit to operate a horse farm, which does not amount to good cause or valid circumstances.

The claimant failed to demonstrate that the basis for her voluntary quit rose to the level needed to demonstrate either good cause or valid circumstances under 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 under the Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are

denied for the week beginning June 27, 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 reversed.

L. Brown

L. Brown, 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 December 20, 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: October 15, 2010
AEH/Specialist ID: USB5F
Seq No: 002
Copies mailed on December 03, 2010 to:

CHERYL L. WESTCOTT
GREGG NECK BOAT YARD INC
LOCAL OFFICE #65