

- DECISION -

Claimant:
AUTUMN M REEDY

Decision No.: 125-BR-15

Date: April 17, 2015

Appeal No.: 1420499

Employer:
MISSION BBQ LLC

S.S. No.:
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.

- 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 17, 2015

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on September 25, 2014. That Decision held that the claimant had voluntarily quit her employment, without good cause or valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were not allowed for the week beginning July 27, 2014, 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.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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. *Md. Code Ann., Lab. & Empl. Art., §8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. 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 the opportunity to present closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument.

The Board finds the hearing examiner's Findings of Fact are not supported by substantial evidence in the record. The Board rejects those Facts makes the following Findings of Fact:

The claimant worked as a delivery driver and kitchen assistant from February 2013 until August 1, 2014.

In early 2014, the claimant reported verbal harassment by the Kitchen Manager to her Operations Manager. Upon review, the Operations Manager acknowledged the inappropriateness of the Kitchen Manager's remarks to the claimant. This manager had already tendered his resignation.

After the manager's departure, the kitchen staff became more hostile to the claimant and a co-worker. The hostility included verbal and physical abuse.

The claimant reported the abuse to the new Kitchen Manager. No action was taken. The claimant, then, reported the abuse to the new Operations Manager.

The claimant was taken off kitchen duties and assigned only delivery driver duties in order to minimize her exposure to the kitchen staff; however, the claimant's hours and pay were reduced.

The claimant contacted the owners regarding the problem of continuing harassment. The owners did not respond to the claimant but directed a Paul Sattler to look into the matter. There was no outcome.

During the next four months, the claimant made 5 formal complaints with no resolution. On August 1, 2014, the General Manager found the claimant smoking a cigarette outside and crying. The General Manager told the claimant that they thought that she was unhappy with the job and unable to deal with the stress of the job. The General Manager told the claimant that if the job was too stressful he would take her off the schedule and get her a job strictly doing catering. The claimant left the business and did not return.

The first matter before the Board is the determination of who was the moving party in the separation. The Board finds that when the claimant returned her keys and failed to return to work, the claimant was the moving party in the separation, and voluntarily quit this employment..

Finding that the claimant voluntarily quit her position, the Board will now determine whether it was for good cause or valid circumstances.

Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001, 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 valid circumstance for voluntarily leaving work is a substantial cause 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. To establish a valid circumstance for leaving one's employment, a claimant is expected to have attempted to adjust the grievance, or explored other options, prior to leaving unless such action would have been futile or fruitless.

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)*.

A worker who asserts that she quit employment because of harassment must establish, by competent evidence, that the harassment was of such a degree that it would have compelled a reasonable person to quit employment. Disciplinary actions and unfriendly co-workers are not necessarily indicative of harassment. Harassment is more than disciplinary actions or warnings. Harassment requires sufficient recurrence or seriousness as to render the situation intolerable. The reason for leaving employment must be based upon facts which would compel any reasonable person to quit his or her job.

The weight of the credible evidence established that the claimant voluntarily quit her position when she was repeatedly harassed by the kitchen staff. The harassment continued after the claimant made repeated formal complaints.

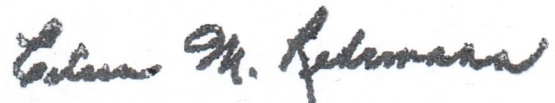
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds, based upon a preponderance of the credible evidence, that the claimant did meet her burden of proof and show that she quit this employment with good cause within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The decision shall be reversed for the reasons stated herein.

DECISION

The Board holds that the claimant voluntarily quit this employment with good cause within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*. The claimant is allowed benefits from the week beginning July 27, 2014, if the claimant is otherwise eligible.

The Hearing Examiner's decision is Reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

AUTUMN M. REEDY

MISSION BBQ LLC

KRISTEN M. LOHMEYER ESQ.

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

AUTUMN M REEDY

SSN #

Claimant

Vs.

MISSION BBQ LLC

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: 1420499

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

September 25, 2014

For the Claimant: PRESENT

For the Employer: PRESENT, MARTIN ATKINSON

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, Autumn Reedy, began working for this employer, Mission BBQ, in February 2013. At the time of separation, the claimant was working as a delivery driver. The claimant last worked for the employer on August 1, 2014, before quitting under the following circumstances:

On August 1, 2014, the claimant arrived at work and became overwhelmed by the number of delivery and catering orders she was tasked with preparing. The claimant stepped outside to smoke a cigarette and started to cry. The general manager, Martin Atkinson, went outside to speak with the claimant and she explained that she was stressed out and that was why she was upset. Mr. Atkinson mentioned that the claimant did not seem happy and told her if her work was too stressful he could take her off the schedule and get her a job strictly doing catering. Mr. Atkinson went back inside. The claimant followed, got her keys, and left without completing her shift. The claimant, thinking she had been fired, did not return to the place of employment after this date.

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.

Where a claimant quit because he feared a discharge was imminent, but he had not been informed that he was discharged, the resignation is without good cause or valid circumstances. Roffe v. State of South Carolina Wateroe River Correction Institute, 576-BR-88.

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.

Although the claimant testified that she had been fired when Mr. Atkinson offered to take her off the scheduled, the claimant was never told she was fired and manifested her intention to quit when she left work in the middle of her shift and never returned. Pursuant to Roffe, *supra*, the claimant's reason for quitting, that she thought she had been discharged, is not for good cause or valid circumstances.

It is thus determined that the claimant has concurrently failed to show that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances 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 July 27, 2014 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 Examiner is affirmed.

DW Purdie

D W Purdie, 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 to Petition for Review

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a review 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 October 10, 2014. 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: September 12, 2014
AEH/Specialist ID: USB1T
Seq No: 001
Copies mailed on September 25, 2014 to:

AUTUMN M. REEDY
MISSION BBQ LLC
LOCAL OFFICE #65