

- DECISION -

Claimant:
SALLY J HYMAN

Decision No.: 160-BR-15

Date: January 26, 2015

Appeal No.: 1420076

S.S. No.:

Employer:
WILLIAMS, RICHARD M, DDS LLC

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: February 25, 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 19, 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 June 8, 2014, and until the claimant has become reemployed, earned at least fifteen (15) times her weekly benefit amount, and become separated from that employment under non-disqualifying conditions.

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)*.

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. The claimant appeared and testified. The claimant was afforded the opportunity to offer documentary evidence and to present a closing statement. 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 to allow additional legal argument in this matter.

The Board adopts the following findings of fact and concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

The claimant was employed as a dental technician from February 12, 2012 through June 11, 2014. The claimant is unemployed as the result of a voluntary quit.

The claimant suffers from Crohn's disease and frequently needed to use the restroom. The claimant occasionally needed time off when her symptoms worsened. About seven months prior to the claimant's last day of work, the employer unilaterally reduced the claimant's hours from full-time to part-time. The claimant desired full-time work in order to pay her bills.

The claimant was subjected to adverse treatment by the employer during the last months of her employment. The claimant was repeatedly asked, "Why don't you just quit". The claimant was made to feel uncomfortable and unwelcome due to her disease's symptoms. After a search for work, the claimant secured a full-time job with another dental office. The claimant quit because her full-time hours were reduced to part-time, because of her treatment by the employer, and to obtain full-time employment.

The fact that the claimant's new full-time job did not have health insurance benefits was not a factor because the claimant obtained private health insurance.

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 substantial detrimental change in working conditions can constitute good cause for voluntarily quitting employment. See *Rockstroh v. Brocato's Restaurant*, 54-BH-86; *Johnson v. Gladenia, Inc.*, 702-BR-91;

Brown v. James Jenkins, Jr., 1890-BR-92. A reduction in pay is a substantial detrimental change. *Smith v. James Hondroulis, 1687-BR-92.*

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 does not cite to the evidence of record and makes no other contentions of error.

The Board does not concur with the hearing examiner's *Conclusions of Law* or her *Evaluation of Evidence*. The claimant did not quit in order to accept better employment for purely economic reasons; therefore, the Board finds *Total Audio - Visual v. DLLR*, 360 Md. 387 (2000) and *Plein v. DLLR*, 369 Md. 421 (2002) inapplicable to the facts of this case. The claimant quit due to the detrimental changes in her working conditions: (1) the claimant's hours were involuntarily reduced from full-time to part-time; (2) as a result, the claimant's pay was reduced; (3) the employer's treatment of the claimant due to accommodations needed for her Crohn's disease worsened over time; and (4) the claimant was encouraged to find other work.

The Board is persuaded that the claimant did not immediately quit her job because she needed the money, albeit with part-time wages. The claimant took reasonable steps to secure full-time employment before quitting her part-time job with this employer. The Board shall not punish the claimant for not immediately quitting and filing for unemployment benefits the moment her conditions of employment detrimentally changed. The Board understands the claimant's need for continuing income – even if it was less than the hours and wages for what she was originally hired. The claimant's process for securing full-time employment while tolerating the deteriorating conditions at her part-time job will not be held against her or treated as the claimant's condonation of the employer's actions.

The Board notes that the employer, duly notified of the date, time and place of the hearing, failed to appear and present any evidence to rebut the claimant's testimony. The Board finds the claimant's testimony credible.

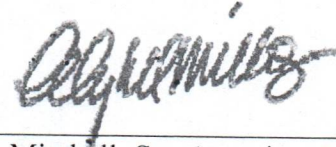
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

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 June 8, 2014, if the claimant is otherwise eligible.

The Hearing Examiner's decision is Reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

SALLY J. HYMAN

WILLIAMS RICHARD M DDS LLC

WILLIAMS RICHARD M DDS LLC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SALLY J HYMAN

SSN #

vs.

WILLIAMS, RICHARD M, DDS LLC

Claimant

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: 1420076

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

September 19, 2014

For the Claimant: PRESENT , MARY KNAPMAN

For the Employer:

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, Sally Hyman , began working for this Employer, Richard M. Williams DDS, on or about February 12, 2012. At the time of separation, the Claimant was working as a part-time dental technician, earning wages in the amount of \$23.00 per hour. The Claimant last worked for the Employer on June 11, 2014, before voluntarily resigning to accept other employment.

The Claimant believed that she wasn't being treated fairly by her Employer. She has Crohn's disease and she was questioned about breaks she needed to use the restroom. She had accepted a reduction in her hours

to part-time for the past 6 months. Her job was not in jeopardy but, when her Employer suggested that she look for other employment, she did so and found a position with a Dr. Zaslow. The new position was a full-time, dental assistant, earning wages in the amount of \$21.00 per hour, no benefits. The Claimant decided it was in her best interest to accept the new position because she could earn more money to cover her living expenses. At the time she left her employment, continuing work was available.

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.

In Total Audio-Visual Systems, Inc. v. DLLR, 360 Md. 387 (2000), the Court held that an individual who has left his or her employment to accept other employment has not left his or her job for good cause as defined in Section 8-1001(b)(1) of the Labor & Employment Article of the Annotated Code of Maryland. This is because quitting ones job for purely economic reasons is neither necessitous nor compelling. See also Plein v. Dep't of Labor Licensing & Regulation, 369 Md. 421, 800 A.2d 757 (2002); Gagne v. Potomac Talking Book Services, Inc., 374-BH-03.

However, a finding of valid circumstances is appropriate if the Claimant can show that accepting the alternative employment was "of such a necessitous and compelling nature that the individual had no reasonable alternative other than leaving the employment." Gaskins v. UPS, 1686-BR-00.

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 the case at bar, that burden has not been met.

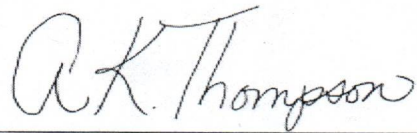
Under Maryland law, voluntarily quitting one job to accept another cannot constitute a quit for good cause as a matter of law. See Total Audio-Visual, *supra*. Furthermore, pursuant to the Board of Appeals decision in Gagne, *supra*, a voluntary quit for purely economic reasons, is a quit for neither good cause nor valid circumstances. The personal reasons offered by the Claimant, are not sufficiently necessitous or compelling

such that she had no other alternative than to quit. Accordingly, she has not shown valid circumstances. Therefore, benefits must be denied at this time.

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 8, 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 Specialist is modified as to date of penalty.



A K Thompson, 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 October 06, 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 10,2014

TH/Specialist ID: USB3D

Seq No: 001

Copies mailed on September 19, 2014 to:

SALLY J. HYMAN

WILLIAMS RICHARD M DDS LLC

LOCAL OFFICE #65

WILLIAMS RICHARD M DDS LLC