

- DECISION -

Claimant:
ERIKA MIMS

Decision No.: 1603-BR-14

Date: June 4, 2014

Appeal No.: 1403738

S.S. No.:

Employer:
ANCILLARY SERVICES INC

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: July 4, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact and conclusions of law. Notwithstanding, the Board finds that only the minimum five-week penalty is warranted under the facts of this case.

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 the instant case, the Board concurs with the hearing examiner's *Evaluation of Evidence*; however, the Board finds the facts of this case warrant only the minimum penalty in light of the claimant's treatment by her supervisor. The Board does not find that good cause is supported because she did not pursue, on her own initiative, speaking with Dr. Grau.

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 for good cause within the meaning of § 8-1001.

However, the Board finds based on a preponderance of the credible evidence that the claimant met her burden of demonstrating that she quit for valid circumstances within the meaning of § 8-1001. The minimum five-week penalty is measured and appropriate on the facts of this case.

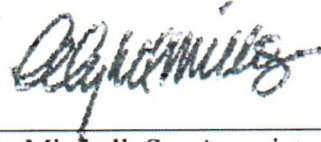
The hearing examiner's decision shall be modified for the reasons stated herein and in the hearing examiner's decision.

The employer should note that, provided that it has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Emp. Art. § 8-616*, 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)*.

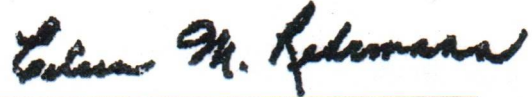
DECISION

It is held that the claimant left work voluntarily, without good cause but for 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 December 29, 2013 and the four weeks immediately following.

The Hearing Examiner's decision is modified.



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

ERIKA MIMS

ANCILLARY SERVICES INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ERIKA MIMS

SSN #

vs.

ANCILLARY SERVICES INC

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: 1403738

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

March 13, 2014

For the Claimant: PRESENT

For the Employer: PRESENT, EDWIN BUTLER

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, Erika Mims, was employed with Ancillary Services, Inc. from June 3, 2013 to January 3, 2014. At the time of separation, she was working full time as a human resource assistant, earning \$20.19 per hour. The claimant voluntarily quit the job.

The claimant's immediate supervisor was Kimberly Bresnahan, the COO and acting human resource director. On July 9, 2013, Ms. Bresnahan asked the claimant to do exit interviews. This was not part of the claimant's job description, but she complied. While doing so, Ms. Bresnahan called her and chastised her for taking too long on the interviews. When the claimant returned to the office, she e-mailed Ms. Bresnahan, requesting to speak with her. Ms. Bresnahan never responded and did not speak to the claimant

for two weeks.

On August 13, 2013, an outside consultant attempted to give the claimant a written warning from Ms. Bresnahan, based on someone else's statement that the claimant failed to submit daily payroll logs. The claimant disagreed with it and did not sign the warning. She asked to speak about this with Ms. Bresnahan, but Ms. Bresnahan refused. On August 27, 2013, the consultant told the claimant that the warning was missing from the claimant's file and Ms. Bresnahan thought the claimant took it. The claimant told Ms. Bresnahan that she did not take. Ms. Bresnahan said, "I don't know that."

The claimant had physical symptoms and began taking time off to see doctors approximately once per week. She did not yet have a diagnosis. On September 5, 2013, she submitted an ADA request for reasonable accommodation to Jay McClelland, the human resource generalist. The claimant got no response. Mr. McClelland told her Ms. Bresnahan "ignored it." He also told the claimant that Ms. Bresnahan was going to extend the claimant's probation another 30 days and, "she would guarantee (the claimant) would not make it through it."

On September 26, 2013, Ms. Bresnahan called the claimant into her office to chastise the claimant for telling people that Ms. Bresnahan was going to extend the claimant's probation. Ms. Bresnahan never denied saying that she would guarantee that the claimant would not make it through the probation. She said she was disappointed in the claimant's performance.

On October 17, 2013, the claimant submitted her resignation, effective November 1, 2013. However, she told Ms. Bresnahan that she would stay until a replacement was found. On December 18, 2013, the claimant informed Ms. Bresnahan that her last day would be January 3, 2014. During the notice period, Ms. Bresnahan excluded the claimant from human resource meetings. In January 2014, after resigning, the claimant was diagnosed with lupus.

The claimant reported her problems with Ms. Bresnahan to Mr. McClelland. She reported that Ms. Bresnahan was nasty and disrespectful to the claimant and did not properly communicate with her. However, Ms. Bresnahan was also Mr. McClelland's supervisor and he did not take any action to resolve the issues. The claimant did not report the problems to Dr. Grau, who was above Ms. Bresnahan, because she was told she was not allowed to speak to him.

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.

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, the claimant voluntarily quit her job because of a substantial cause connected with the employment, constituting valid circumstances.

The claimant's immediate supervisor was repeatedly nasty and argumentative toward the claimant and failed to properly communicate with her. The claimant reported this to the human resource generalist, but nothing changed. The claimant subsequently resigned.

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning December 29, 2013 and for the 9 weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.



R M Tabackman, 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 March 28, 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: March 07, 2014
DAH/Specialist ID: USB22
Seq No: 002
Copies mailed on March 13, 2014 to:

ERIKA MIMS
ANCILLARY SERVICES INC
LOCAL OFFICE #65