

- DECISION -

Claimant:
LARRY J HUGHES

Decision No.: 1656-BR-12

Date: April 2, 2012

Appeal No.: 1134972

S.S. No.:

Employer:
T & T ENTERPRISES OF OHIO INC

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.

- 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 2, 2012

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. However, 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 his appeal, the claimant reiterates his testimony from the hearing and contends he has a need for unemployment benefits. Financial need is not a factor which is considered in the decision of whether a claimant is entitled to benefits. However, the Board has conducted a thorough review of the record and finds that the hearing examiner's decision was in error and should be reversed.

The claimant was working part-time for this employer. He worked sporadically, depending upon the employer's need. The claimant sought and secured a different job, which was full-time in nature. The new position paid slightly less per hour, but the claimant was assured of a full work week, thus greatly improving his earnings. In addition, this new position appeared to be more stable and secure.

The Board finds that the claimant did not quit his part-time job for full-time work for purely economic reasons. The Board previously found other, similar instances, to constitute valid circumstances. *See Hill v. The Great A and P Tea Company, Inc.*, 715-BR-87; *Ellinger c. R. Marinucci and Sons, Inc.*, 728-BR-88; *Walsh v. Martin Marietta Corporation*, 623-BR-88. In each of these cases, the claimant quit one employment for the purposes of accepting other employment which was more stable, had benefits, less travel, better hours, or other more suitable conditions. Each claimant was found to have had valid circumstances. The Board finds the claimant's situation to be analogous and concludes that he had valid circumstances for leaving this part-time employment.

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 has met his burden of demonstrating that he quit for valid circumstances within the meaning of §8-1001. The decision shall be reversed for the reasons stated herein.

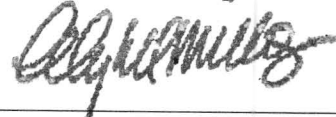
DECISION

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 March 27, 2011, and the four weeks immediately following.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

LARRY J. HUGHES

T & T ENTERPRISES OF OHIO INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

LARRY J HUGHES

SSN #

Claimant

Vs.

T & T ENTERPRISES OF OHIO 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: 1134972

Appellant: Employer

Local Office : 63 / CUMBERLAND
CLAIM CENTER

October 28, 2011

For the Claimant: PRESENT

For the Employer: PRESENT, JOHN CANNON

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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant, Larry Hughes, began working for this employer, T & T Enterprises on in January 2010, and his last day worked was Approximately March 31, 2011. At the time of his voluntary quit, the claimant worked as a part-time mail driver earning \$22.85 per hour. The claimant voluntarily quit his position with this employer to accept other work at the Baltimore Post Office, as a full-time mail hauler, earning \$18.52 per hour. The claimant accepted the subsequent job because it was full-time. He worked for his subsequent employer until August 2011, earning approximately \$15,750 (Claimant Exh 1).

CONCLUSIONS OF LAW

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 THE EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, that he voluntarily quit his position with this employer for reasons which 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, the claimant did not meet this burden.

“Voluntarily quitting one’s job to accept better employment cannot constitute good cause within the meaning of Section 8-1001 as a matter of law. *Total Audio-Visual v. DLLR*, 360 Md. 387, 395, 758 A. 2d 124, 128 (2000) (‘[a] plain reading of Section 8-1001 makes clear that leaving employment for a better paying job does not constitute ‘good cause.’) It may, however, constitute ‘valid circumstances’ if it can be shown the reasons for quitting meet the ‘necessitous or compelling’ test of Section 8-1001 (c) (ii). Voluntarily quitting one’s job for purely economic reasons is neither ‘necessitous’ nor ‘compelling’ under Section 8-1001. There must be a showing of something more connected with the conditions of the prior employment which motivated the claimant to quit his or her job to accept better employment to constitute a valid circumstance within the meaning of Section 8-1001.” (Davis v. Daniel G. Schuster, LLC, 438-BH-03).

Similarly, in the case at bar, the claimant resigned for a better job. This reason for resignation constitutes neither good cause nor a valid circumstance. See. Total Audio.

Accordingly, I hold the claimant failed to meet his burden in this case and the claimant’s voluntary quit was neither for good cause nor due to a valid circumstance, and benefits are, therefore, disallowed.

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 March 27, 2011, 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.

IT IS FURTHER HELD that the local office determines if the claimant self served the penalty. (See enclosed paystub).

The decision of the Claims Specialist is reversed.



C E Edmonds, 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 November 14, 2011. 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 19, 2011

AEH/Specialist ID: WCU1Q

Seq No: 003

Copies mailed on October 28, 2011 to:

LARRY J. HUGHES
T & T ENTERPRISES OF OHIO INC
LOCAL OFFICE #63