

- CORRECTED DECISION -

Claimant:
SABRINA GASKINS

Decision No.: 1686-BR-00
Date: September 26, 2000

Appeal No.: 0008515

S.S. No.:

Employer:
UNITED PARCEL SERVICE

L.O. No.: 60

Appellant: Employer

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: October 26, 2000

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. Based on those facts, however, the Board reverses the decision and concludes that the claimant failed to prove that she voluntarily quit her job for reasons that amount to either good cause or valid circumstances, within the meaning of LE, Section 8-1001.

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 serious, 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.

This case concerns the eligibility for benefits of a claimant who quit a job to accept a position with a different employer. On August 25, 2000, the Court of Appeals issued a decision that addresses this exact issue, **Total Audio-Visual Systems, Inc. v. Department of Labor, Licensing and Regulation et al**, (In the Court of Appeals of Maryland, No. 145, September Term, 1999). In that decision, the Court reversed a decision of the Board of Appeals and the Circuit Court of Montgomery County which held that a claimant who quit a job to accept another job had good cause for quitting within the meaning of the statute. The Court concluded that such a reason for quitting could not be good cause, because it was not directly attributable to, arising from, or connected with either a condition of employment or an action of the employment unit. Thus, the Court's decision has the effect of overturning the long standing Board precedent decision, **Baywood v. R.M.R. Corp.**, 408-BR-82.

In **Baywood**, the Board of Appeals held that (1) where a claimant is offered a substantially higher salary at another place of employment, (2) where the employment offered is in the same field, (3) there is a definite and bona fide offer of employment, and (4) the work is at least as stable and permanent, the claimant has good cause for leaving to accept the superior employment. In that decision, the Board stated that the words "connected with the conditions of employment" refer to the total conditions of employment for any individual. A key element to a finding of good cause was that the employment offered is in the same field as the employment that the claimant is leaving.

Even under the reasoning in **Baywood**, the Board would reverse the Hearing Examiner's decision in this case, for two reasons. First, there is little support in the record for the conclusion that the new job was in the same field as the old job. The claimant left a position as a supervisor for UPS to work as a private investigator for an insurance company. Therefore at least one crucial element of **Baywood** was missing. Second, there is also insufficient evidence that the new job was at least as stable and permanent as the old job. In fact, the claimant's filing for unemployment insurance one month after quitting UPS would tend to prove the opposite.

In a case of a voluntary quit, the claimant has the burden of proving that she left for reasons that amount to either good cause or valid circumstances. **Chisholm v. Johns Hopkins Hospital**, 66-BR-89. Here, the claimant did not appear and testify at the hearing. The only testimony is from the employer. Even accepting that evidence regarding the increase in pay and bona fide offer of employment, the claimant failed to meet her burden of proving good cause, under the **Baywood** test.

However, the Board must now review this case in light of the Court of Appeals decision in **Total Audio-Visual Systems, Incorporated**. The first question that must be addressed is whether that decision should be applied to a separation that occurred prior to the issuance of the decision. The claimant in the instant case voluntarily quit her job with UPS on April 18, 2000, four months before the Court issued its decision. However, due to the various stages of appeal, the claimant's case was still pending on August 25th.

In **Janda v. General Motors Corporation**, 206 A.2d 228 (1964), the Court of Appeals discussed the retrospective application of a statutory change. It set out the “various rules that have been formulated by the courts to aid in determining whether a statute is to be applied retrospectively or prospectively”:

- (1) “Ordinarily a change affecting procedure only, and not substantive rights, made by statute...applies to all actions [and matters] whether accrued, pending or future, unless a contrary intention is expressed.”... (2) Ordinarily a statute affecting matters or rights of substance will not be given a retrospective operation as to transactions, matters and events not in litigation at the time the statute takes effect... (3) A statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights, to impair the obligation of contracts, or so as to violate the due process clause,... (4) A statute which affects or controls a matter still in litigation when it became law will be applied by the court reviewing the case at the time the statute takes effect, although it was not yet law when the decision appealed from was rendered, even if matters or claims of substance... unless the Legislature intended the contrary.

Janda, at 232-233.

In **Janda**, the Court allowed the retrospective application of the law change involved, in part because it resulted in more benefits to the claimants. Obviously, this is not the case here. However, **Janda** concerned a substantive statutory change. In this instance, the statute has not changed. The Court of Appeals has instead ruled that the Board’s prior interpretation of the existing statute was incorrect; in fact, in the view of the Court, the law always was intended to deny benefits to claimants who quit under these circumstances. Therefore, the Board concludes that the Court’s decision in **Total Audio- Visual Systems, Inc.** is applicable to all matters still in litigation when it was issued on August 25, 2000 and therefore must be applied in this case, despite the fact that the separation that is the subject of this case occurred prior to August 25th.

Having concluded that **Total Audio-Visual Systems, Inc.** is applicable, the Board concludes based on that case (as well as on our prior reasoning based on **Baywood**) that the claimant did not have good cause to quit her job with UPS. The question that remains, then, is whether the Board may consider whether or not the claimant had valid circumstances for quitting that job.

The decision of the Court of Appeals does not fully address this issue. It appears that the Court does not find that leaving for another job could be a “substantial cause that is directly attributable to, arising from, or connected with the conditions of employment or actions of the employing unit.” LE, 8-1001(c)(i). However, the Court does indicate that leaving for a better job may meet the second definition of valid circumstances:

As such, as Paynter makes clear,... in order to be a valid circumstance, an offer of higher pay must meet the “necessitous and compelling”¹ test. This is a stricter test than the test for good cause; more

¹ The statute actually states “necessitous or compelling”, not and compelling.

needs to be shown than that the precipitating event or cause “would reasonably [have] impel[led] the average able-bodied qualified worker to give up his or her employment.”

Total Audio-Visual Systems, Inc. v. Department of Labor, Licensing and Regulation et al, (In the Court of Appeals of Maryland, No. 145, September Term, 1999).

Thus, according to the Court of Appeals, if a claimant can show that the acceptance of the new job was “of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment”, valid circumstances may be found.

With regard to Ms. Gaskins, the claimant herein, the Board concludes that she has failed to prove such necessitous or compelling circumstances. Therefore the Board finds that neither good cause nor valid circumstances exist.

DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause or valid circumstances, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. She is disqualified from receiving benefits from the week beginning April 16, 2000 and until the claimant becomes re-employed, earns at least fifteen times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.

Hazel A. Warnick, Chairperson


Donna Watts-Lamont, Associate Member

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 410-949-0022 or 1-800-827-4839. 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.

KJK

Copies mailed to:

SABRINA GASKINS
UNITED PARCEL SERVICE
LOCAL OFFICE #60
ALTA L. DENLINGER

UNEMPLOYMENT INSURANCE APPEALS DECISION

SABRINA GASKINS

SSN #

Claimant

vs.

UNITED PARCEL SERVICE

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: 0008515
Appellant: Employer
Local Office : 60 / TOWSON CALL
CENTER

June 21, 2000

For the Claimant :

For the Employer : PRESENT , HARRY BROWN, JAYMIE DRUMGO

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 was employed with the above-captioned employer from April 4, 1999 to April 17, 2000 as a part-time supervisor working between 25-30 hours per week. The claimant earned \$1,325 monthly.

The claimant resigned to accept full-time work as a private investigator. The claimant deemed the subsequent job better because it was full-time work and the claimant was offered \$13 an hour.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996) 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

In a voluntary quit case, the claimant bears the burden of proving, by a preponderance of the evidence, that the claimant's separation constitutes good cause or valid circumstances.

If an employee quits in order to accept a better job, the resignation is for good cause if all the following criteria are met; 1) there is a bona fide offer of employment made before the employee resigns; 2) the new job is in the same field as the old job; 3) the new job offers substantially more wages and benefits than the old job and; 4) the new job is at least as stable and permanent as the old job. In the instant case, the claimant has satisfied these four factors. Therefore, a finding of good cause is warranted.

DECISION

IT IS HELD THAT the claimant left the employment voluntarily but with good cause within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996). No disqualification is imposed based upon this separation from employment with United Parcel Service. The claimant is eligible to receive benefits from the week beginning April 16, 2000, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law.

The determination of the Claim Specialist is modified due to the claimant's last day of work.

C Edmonds, Esq.
Hearing Examiner

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A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Notice of Right to Petition for Review

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by July 6, 2000.

Note: Appeals filed by mail are considered timely on the date of the U. S. Postal Service postmark.

Date of hearing : June 14,2000
THJ/Specialist ID: UTW3T
Seq No: 001
Copies mailed on June 21, 2000 to:

SABRINA GASKINS
UNITED PARCEL SERVICE
LOCAL OFFICE #60
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