

- DECISION -

Claimant:
CANDACE GLACKEN

Decision No.: 1847-BR-11

Date: April 11, 2011

Appeal No.: 1043228

Employer:
ADVANCED VACUUM CO INC

S.S. No.:

L.O. No.: 63

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: May 11, 2011

REVIEW ON THE RECORD

After a review on the record, the Board deletes the word "downsizing", replacing it with "expansion", in the fourth sentence of the second paragraph. The Board adopts the hearing examiner's modified findings of fact and conclusions of law. The Board makes the following additional findings of fact:

The claimant was upset that she had not been asked about the change in her assignment. She believed that, because of her tenure, she should have been consulted or, at least, had her preference given some consideration. The employer made a business decision to return the claimant to her prior position because of her skills in that position. The employer remained satisfied with the claimant's performance and wanted to retain her as an employee.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

“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.

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 that the reasons for quitting meet the "necessitous or compelling" test of Section 8-1001(c)(ii). Section 8-1001(c)(i) is inapplicable as a matter of law in cases such as the one at bar. The Court of Appeals found, "[n]ot being directly related to, attributable to or connected with the employee's employment or the actions of that employing unit, offers of higher pay as an inducement to leave existing employment must fall, if at all into [Section 8-1001(c)(ii)]."

This is a stricter test than the "good cause" test. *Plein v. DLLR, 369 Md. 421 (2002)*. Under this stricter test the Court of Appeals requires that more needs to be shown and 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, supra, quoting Board of Educ. of Montgomery County v. Payner, 303 Md. 22, 29, 491 A.2d 1186, 1189-90 (1985)*.

The Board's current interpretation of *Total Audio - Visual*, read in conjunction with the *Plein* decision, finds that voluntarily quitting one's job for purely economic reasons is neither "necessitous" nor "compelling" under Section 8-1001. To the extent that this interpretation is inconsistent with *Gagne v. Potomac Talking Book Services, Inc., 374-BH-03*, the Board overrules its prior precedent decision in *Gaskins v. UPS, 1686-BR-00*.

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 better employment to constitute a valid circumstance within the meaning of Section 8-1001. The Court of Appeals has stated, "Accepting more money and changing jobs is as much of a gamble and thus, as much of a personal matter as going in to

business for oneself. In [the Court of Appeals'] view, it is unmistakably clear that Section 8-1001(a) was

not designed to provide benefits when the precipitating cause for the voluntary leaving of employment was for higher pay or a better job. Instead, it was designed to prevent hardship to persons who lose their job "through no fault of their own." *Plein v. DLLR*, 369 Md. 421 (2002), quoting *Total Audio - Visual*.

In *Plein, supra*, the claimant was employed by Atlas Tile & Terrazo as a tile setter's helper at a job paying \$9.00 per hour. He accepted employment with Home Depot, U.S.A. as a sales associate in the floor and wall department. The Home Depot job paid \$12.00 per hour with the prospect of receiving, after a waiting period, a health insurance plan and stock purchase options and, after one year, two weeks vacation and sick leave. The claimant left his employment with Atlas and began working at Home Depot on August 14, 2000. On September 27, 2000, the claimant was laid off through no fault of his own. The Courts of Appeals found that the claimant was not entitled to unemployment benefits under the "necessitous or compelling" test of Section 8-1001 under its interpretation and under the authority of *Total Audio - Visual*, 360 Md. 387, 400-01, 758, A.2d 124, 131-32 (2000).

The Court explained in *Plein*, "In *Total Audio-Visual*, this Court, albeit, and perhaps significantly so, a sharply divided one, determined, and held that the General Assembly did not intend that a person who voluntarily terminates his or her otherwise satisfactory employment for other employment with better pay be eligible to receive unemployment benefits when laid off through no fault of his or her own by the subsequent employer."

In its appeal, the employer reiterates testimony from the hearing. The employer also attempts to clarify the hearing examiner's findings of fact. Some of the employer's assertions of fact were not actually the subject of any testimony from the employer's witness at the hearing. The Board will not substitute the written statements from the employer's appeal for the sworn testimony of its witness at the hearing. However, the testimony from both the claimant and employer witness did establish sufficient facts upon which our decision may be made.

The employer further contends that the claimant did not have good cause for quitting. The Board concurs with this assessment for the reasons which follow.

The evidence established that the claimant quit this position because she felt "disrespected" when she was not consulted about the change in her job assignment. The claimant preferred working in Accounts Payable, but the employer needed her skills in Purchasing and Data Entry. The employer elected to hire someone from the outside for the Accounts Payable job, and the claimant disagreed with this decision. There was no demotion; no change in the conditions of employment; no reduction in pay or benefits. The claimant was moved back to a job she had done, and done well, in the past. The claimant did not approve of the employer's business decision, and decided to seek other employment. When she secured something else, closer to her home and at about the same pay rate, she quit. This was not good cause and was not valid circumstances.

To establish good cause the claimant would have had to demonstrate that the changes made by the

employer somehow worsened her working conditions. The evidence will not support such a finding. The claimant was simply transferred back to a position for which she had experience and expertise. The mere fact that she preferred another set of duties does not elevate this to good cause.

To establish valid circumstances the claimant would have had to show that she was personally aggrieved; that there was a substantial job change; that she was compelled to leave. The evidence will not support any such finding. The job change was not substantial, merely undesirable by the claimant. She could have continued at the same rate of pay, under the same conditions, performing tasks she knew. There was nothing in the evidence to show that the claimant was compelled to leave this employment other than her decision to accept a different job, closer to her home.

Leaving one employer to work for another is rarely good cause or valid circumstances under Maryland law. In this case, the positions, conditions and pay were similar. The only real difference was that the second job was closer to the claimant's home. While this was probably important to the claimant it does not establish good cause or valid circumstances.

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 or valid circumstances within the meaning of § 8-1001. The decision shall be reversed for the reasons stated herein.

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. The claimant is disqualified from receiving benefits from the week beginning September 5, 2010 and until the claimant becomes re-employed, earns at least fifteen times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

CANDACE GLACKEN
ADVANCED VACUUM CO INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

CANDACE GLACKEN

SSN #

Claimant

vs.

ADVANCED VACUUM CO 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: 1043228

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

December 21, 2010

For the Claimant: PRESENT

For the Employer: PRESENT, JOHN BRENNERMAN

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 worked for the above captioned employer from August 30, 1999, through September 10, 2010. The claimant earned \$14.35 per hour while working full time as a purchasing agent and data entry clerk.

The claimant began her employment as a purchasing agent and data entry clerk. However, she spent the last several years of employment working in accounts payable. This was her preferred position. Unfortunately, due to downsizing in the company, the employer chose to move the claimant back to purchasing in January of 2010. The claimant did not wish to transfer and had no input into the decision. Unhappy in the new position, the claimant began searching for alternative employment. When she found a

new job, she quit this position.

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.

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. However, a finding of valid circumstances may be 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 credible evidence presented at the hearing shows that the claimant voluntarily quit this position. In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence presented at the hearing that the quit was for either good cause or valid circumstances, as those terms are defined above. Hargrove v. City of Baltimore, 2033-BH-83.

The claimant quit her position when she found a new job. However, she did not quit for a new job, within the meaning of Total Audio-Visual Systems, Inc. v. DLLR quoted above. Rather, the reason for quitting was clearly due to the employer's decision to change the claimant's job position. That change is materially sufficient to warrant a good cause finding for quitting.

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. No disqualification is imposed based upon this separation from employment. The claimant is eligible for benefits so long as all 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 Examiner is reversed.



M. Franceschini, 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 January 05, 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: December 10, 2010

DW/Specialist ID: WCU3K

Seq No: 002

Copies mailed on December 21, 2010 to:

CANDACE GLACKEN

ADVANCED VACUUM CO INC

LOCAL OFFICE #63