



# Maryland

Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*J. Randall Evans, Secretary*

*Board of Appeals*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*  
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*Board of Appeals*  
*Thomas W. Keech, Chairman*  
*Hazel A. Warnick, Associate Member*  
*Donna P. Watts, Associate Member*

— DECISION —

Decision No.:	1890-BR-92
Date:	October 27, 1992
Claimant:	Loretta N. Brown
Appeal No.:	9213644
S. S. No.:	
Employer:	James Jenkins, Jr.
L. O. No.:	3
Appellant:	CLAIMANT
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.

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— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

November 26, 1992

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— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The Board adopts the findings of fact made by the Hearing Examiner but disagrees entirely with the conclusions of law of the Hearing Examiner.

The claimant accepted the job as a personal care provider with the understanding that she would not have to do any substantial lifting. The job did not at first require any substantial lifting, but the medical condition of her patient changed. As a result of the patient's medical condition changing, the claimant was required to do substantial lifting. The claimant was not able to do this work because of a longstanding medical problem with her back. The claimant's own medical condition had not changed during the course of her employment. She did not injure herself attempting to perform the new, changed duties of her employment.

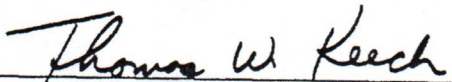
The claimant's reason for leaving is clearly connected with the conditions of her employment. The claimant remained willing and able to perform the type of services for which she was hired, but these duties were no longer available to her. The claimant's duties had changed to duties which the claimant was not medically able to perform. This is a substantial detrimental change in the conditions of employment, and it amounts to "good cause" for leaving the employment.

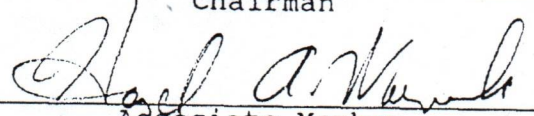
The claimant is not required to injure herself in order to prove that the new job duties were incompatible with her medical condition. She did make some effort to keep up with the increasing demands of the job. Her medical evidence establishes that she is not capable of this kind of lifting. Her testimony that this was explained to the employer at the time of hiring is credible. The conditions of the job changed from those originally agreed upon, and the claimant does not need to assume those new duties against medical advice in order to prove that she has good cause.

#### DECISION

The claimant voluntarily quit, but for good cause, within the meaning of §8-1001 of the Labor and Employment Article. No disqualification is imposed based upon the claimant's separation from employment with James Jenkins Jr.

The decision of the Hearing Examiner is reversed.

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Associate Member

K:H

kmb  
COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - CUMBERLAND

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer, Governor*  
*Mark W. Wasserman, Secretary*

*Gary W. Wiedel, Administrator*  
*Louis Wm. Steinwedel, Chief Hearing Examiner*

*Room 511*  
*1100 North Eutaw Street*  
*Baltimore, Maryland 21201*

**— DECISION —**

Claimant:	Loretta N. Brown	Date:	Mailed: 07/31/92
		Appeal No.:	9213644
		S. S. No.:	
Employer:	James Jenkins, Jr.	L. O. No.:	003
		Appellant:	CLAIMANT

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of the Code of MD, Labor and Employment Article, Title 8, Section 1001.

**— NOTICE OF RIGHT TO PETITION FOR REVIEW —**

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

August 17, 1992

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

NOTE: APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. PORTAL SERVICE POSTMARK.

**— APPEARANCES —**

FOR THE CLAIMANT:

FOR THE EMPLOYER

Loretta N. Brown - Present

Not Present or  
Represented

**FINDINGS OF FACT**

The claimant worked for the employer from July 16, 1991 through November 26, 1991. She was employed as a care provider and earned \$6.25 per hour, full-time.

The claimant voluntarily quit her employment on or about November 26, 1991, because she feared that she would injure herself moving her patient.

The credible evidence indicates that when the claimant accepted the position, she realized that she would not have to move the patient very often. The patient was ambulatory and was able to get up and down and in and out of chairs and beds, etc. The claimant's patient's condition worsened during the fall of 1991. In November 1991, the claimant submitted her resignation to the employer. The claimant felt that she would not be able to continue lifting or helping to move the patient. The claimant had a long standing back problem which was documented by the claimant.

However, the claimant did not sustain any injury working for the employer. The claimant was not ordered by a physician to leave her employment in November, 1992. The claimant was not being actively treated by her physician.

The employer was not present to present evidence at this hearing.

#### CONCLUSIONS OF LAW

The Code of Maryland, Labor and Employment Article, Title 8, Section 1001 provides that an individual shall be disqualified for benefits where his 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. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause or valid circumstances, within the meaning of Title 8, Section 1001.

In the instant case, the claimant voluntarily quit her employment because of what she perceived as would be future problems moving the patient around. The claimant had not experienced any troubles and had not been treated by a physician in November 1991, when she decided to leave her job. Since the claimant decided to leave her job for things that may or may not occur in the future, the claimant has not shown good cause attributable to the employer or valid circumstances for leaving the position. The claimant had sustained no injury on the job nor had any difficulty moving or any difficulty with her own physical ability prior to her leaving employment. The claimant left because of what she perceived would happen in the future.

DECISION

The claimant voluntarily quit her employment, without good cause or valid circumstances, within the meaning of the Code of Maryland, Labor and Employment Article, Title 8, Section 1001. Benefits will be denied from the week beginning November 10, 1991 until the claimant becomes re-employed and earns at least ten times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is affirmed.

Kevin M. O'Neill - KE  
Kevin M. O'Neill  
Hearing Examiner

Date of Hearing: 07/29/92  
ke/Specialist ID: 03252  
(Cassette Attached to File)

Copies mailed on 07/31/92 to:

Claimant  
Employer  
Unemployment Insurance - Cumberland (MABS)