

- DECISION -

Claimant:
NINA L SCOTT

Decision No.: 1914-BR-14

Date: July 14, 2014

Appeal No.: 1402006

Employer:
CONNECTICUT GENERAL LIFE INS

S.S. No.:

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: August 13, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board also makes the following additional findings of fact.

The overtime initially offered by the employer at the time of hire was that after the claimant worked for six months overtime could be offered but it was not mandatory. Mandatory overtime was not contemplated at the time of the claimant's hire. Mandatory overtime within six weeks of hire was not agreed-upon by the parties at the time of hire. The employer was aware of the claimant's distant home location and the claimant's long commute at the time of hire.

The Board finds that these facts warrant a different conclusion 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.

A substantial detrimental change in working conditions can constitute good cause for voluntarily quitting employment. See *Rockstroh v. Brocatto's Restaurant*, 54-BH-86; *Johnson v. Gladenia, Inc.*, 702-BR-91; *Brown v. James Jenkins, Jr.*, 1890-BR-92.

A substantial change in the agreed-upon hours of employment may constitute good cause, *DiBartolemeo v. Yaffe and Company of Baltimore, Inc.*, 1089-BH-89, *Heavner v. Auto Trader Company*, 195-BR-90, *Phillips v. Loughlin Security Agency, Inc.*, 2116-BH-92, or valid circumstances if for compelling personal reasons, *Johnson v. Direct Housekeeping*, 183-BR-86.

In the instant case, the Board finds that the employer and the claimant agreed that the claimant would not work overtime during the first six months of her employment and that the claimant could work from home between six to twelve months after her start date. Notwithstanding this agreement, the employer unilaterally changed the claimant's conditions of employment about six weeks after the claimant's start date. The employer mandated that the claimant work ten hours of overtime per week, including working on Saturdays. The employer denied the claimant's accommodation request to work home during the extra hours. The employer's premature change in the conditions of employment was a breach of their original agreement and caused the claimant unexpected undue hardship. The Board finds the change in the claimant schedule constituted a detrimental change directly attributable to the conditions of employment.

The Board notes that the employer, duly notified of the date, time and place of the hearing, failed to appear. The Board finds the claimant's testimony credible and un-rebutted.

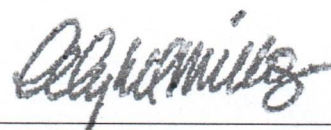
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant met her burden of demonstrating that she quit for good cause within the meaning of § 8-1001. The hearing examiner's valid circumstances decision shall be reversed for the reasons stated herein.

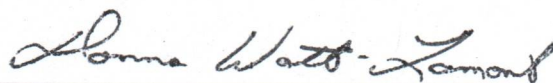
DECISION

It is held that the claimant voluntarily quit, but for good cause connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8 Section 1001. No disqualification is imposed based upon the claimant's separation from employment with CONNECTICUT GENERAL LIFE INS.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

NINA L. SCOTT

CONNECTICUT GENERAL LIFE INS

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

NINA L SCOTT

SSN #

Claimant

vs.

CONNECTICUT GENERAL LIFE INS

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: 1402006

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

February 21, 2014

For the Claimant: PRESENT

For the Employer:

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, Nina Scott, was employed as a full time senior customer specialist with Connecticut General Life Insurance from September 16, 2013, to December 11, 2013. The claimant's wage at the time of separation from this employment was \$17.50 per hour.

The claimant voluntarily resigned from this employment because she was required to work overtime sooner than contemplated by the parties at the time of hire. At the time that the claimant interviewed for this position she communicated to the employer that she had previously worked from home and hoped to continue to do so. The employer advised the claimant that she may be able to start working from home 6 (six) months to 12 (twelve) months after beginning this employment so long as the claimant met the

employer's performance standards. Working from home was of particular importance to the claimant when considering whether to accept this employment due to the fact that the claimant would have to commute 182 miles roundtrip from her residence in Maryland to the employer's premises in Pennsylvania. The employer further advised the claimant that she would not be required to work overtime during her first 6 (six) months of employment because she would be "on a learning curve." The claimant accepted this position based upon the aforementioned information.

After completing 6 (six) weeks of training, the claimant began working on the sales floor. On the claimant's second day working on the floor, the claimant was advised that due to high call volume all employees would be required to work 10 (ten) hours per week mandatory overtime. The claimant spoke to her supervisor as well as to the service center director in an attempt to resolve this matter but to no avail. The claimant was willing to work overtime if she could work from home; however the employer would not allow it. As a result of this mandatory overtime the claimant had to work on Saturdays and was working 6 (six) days per week. This extra day of work greatly increased the claimant's transportation costs and due to the high price of fuel and tolls, the claimant was spending on average of \$720.00 per month on her commute. The claimant attempted to work the mandatory overtime for several weeks but was simply unable to afford to do so after December 11, 2013. The claimant thus resigned.

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.

The claimant worked 800 hours of overtime during one year, which was far in excess of the overtime contemplated at his hiring. The excessive overtime amounted to valid circumstances. Beckmann v. Peninsula General Hospital, 1165-BR-88.

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, this burden has been met.

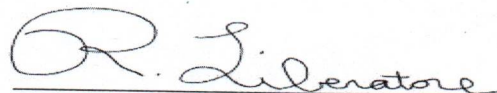
Although duly notified, the employer failed to be present at the hearing to provide testimony in this matter. The credible testimony presented at the hearing indicates that the claimant voluntarily resigned from this employment because she was required to work overtime sooner than contemplated by the parties at the time of hire. The claimant testified credibly that her position with this employer required that she commute 182 miles roundtrip. Although the claimant was willing to make this commute 5 (five) days per week, once the employer required that she begin working mandatory overtime on Saturdays, it simply became cost prohibitive for her to continue. The claimant further testified that the employer had assured her that she would not be required to work overtime until after she had worked for the company for 6 (six) months and that she believed that she would be able to work overtime at that juncture because she would have been with company long enough for her to be allowed to work from home.

Based upon this credible testimony, the Hearing Examiner finds that the claimant's resignation was for a substantial cause connected to the conditions of employment. It is thus determined that the claimant has demonstrated that the reason for quitting rises to the level necessary to demonstrate valid circumstances within the meaning of the sections of law cited above.

DECISION

IT IS HELD THAT the claimant voluntarily left the employment without good cause but with valid circumstances warranting a mitigated penalty under Section 8-1001 of Md. Code Ann. Labor & Emp. Article. Benefits are denied from the week beginning December 8, 2013, and for the 9 weeks thereafter. The claimant may contact the Claimant Information Service regarding 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 Liberatore, 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 10, 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: February 19, 2014
DAH/Specialist ID: USB7J
Seq No: 003
Copies mailed on February 21, 2014 to:

NINA L. SCOTT
CONNECTICUT GENERAL LIFE INS
LOCAL OFFICE #65