

-DECISION-

Claimant:
SHERIKA R DAVIS

Decision No.: 1938-BH-11

Date: April 08, 2011

Appeal No.: 1041088

Employer:
CHALLENGER TRANSPORTATION INC

S.S. No.:

L.O. No.: 61

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 09, 2011

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

MIKE HEALY, Vice President
HAMID RAHNEMA, General Mgr.
MOHAMMED BANGURA, Operations Mgr.

PRELIMINARY STATEMENT

The Board of Appeals (Board) scheduled this matter for a continued hearing on March 29, 2011 at 11:00 am. Notice of the time and place of the hearing was mailed to the parties at their addresses of record. The employer appeared and presented additional credible evidence in this matter. The claimant failed to appear.

EVALUATION OF EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

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)*.

FINDINGS OF FACT

The claimant was employed as a Driver. The claimant became separated from employment as a result of a voluntary quit. The claimant's last day of work was September 21, 2010.

The claimant resigned because she subjectively felt she was being sexually harassed by other employees. The claimant never brought her concerns to anyone in a supervisory or managerial position. The claimant did not raise any concerns with any of her union representatives.

The Claimant was not sexually harassed by anyone in the workplace.

CONCLUSION S OF LAW

"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 three 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; (3) when the claimant's quit is caused by the individual leaving employment (i) to follow a spouse serving in the United States military or (ii) because the claimant's spouse is a civilian employee of the military or of a federal agency involved with military operations and the spouse's employer requires a mandatory transfer to a new location. *Md. Code Ann., Lab. & Empl. Art., §8-1001(c)(1)(iii)*. 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.

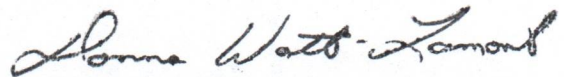
In the instant case, the claimant has failed to meet her burden. The claimant's evidence was insufficient to establish that she was sexually harassed in the workplace by either her supervisor or other co-workers. The employer credibly refuted the claimant's allegations.

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.

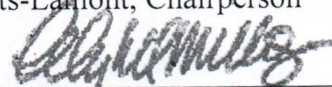
DECISION

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 19, 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.

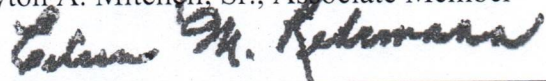
The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

RD

Date of hearing: March 29, 2011

Copies mailed to:

SHERIKA R. DAVIS

CHALLENGER TRANSPORTATION INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SHERIKA R DAVIS

SSN #

Claimant

vs.

CHALLENGER TRANSPORTATION 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: 1041088

Appellant: Claimant

Local Office : 61 / COLLEGE PARK

CLAIM CENTER

December 10, 2010

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 began working for this employer on or about January 25, 2010. At the time of separation, the claimant was working as a driver. The claimant last worked for the employer on or about September 20, 2010, before quitting.

The claimant resigned from the workplace because she felt that she was being sexually harassed by other employees.

The first incident occurred on or around March 2010. The claimant did not arrive early enough to the workplace to receive a manifest, a schedule required to work that day. She approached her supervisor,

Mohammed, to request a manifest. Mohammed asked the claimant what she would do for him if he gave her a manifest. He then asked her if he could take her out to lunch. The claimant did not report this incident to an authority figure within the company. She continued to work for the company.

On several other occasions, the claimant was told by co-workers that she looked good. The claimant continued to ignore the comments and continued to work for the company. The claimant ultimately resigned from her employment with the company because she grew tired of the comments.

She did not speak to an authority figure within the company regarding the comments prior to resigning. At no time was she physically touched.

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.

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.

The claimant offered credible and uncontroverted testimony that on several occasions she was verbally harassed by her co-workers in a sexual nature. On one occasion, the claimant's co-worker asked what she would do for him if he gave her a work manifest. On other occasions, the claimant was told that she "looked good." The claimant was never physically harassed.

The claimant acknowledged that she never informed an authority figure in the company about her co-workers' behavior. The first incident occurred in March 2010. The claimant did not resign until September 2010. At the time of her resignation, the claimant informed her supervisor that she unwilling to put up with the work environment any longer.

The employer was not present at the hearing to refute the claimant's allegations.

Because the claimant did not make efforts to inform her supervisor of her co-worker's behavior in an attempt to stop the behavior, a finding of good cause is not warranted. However, the claimant did ultimately resign from the workplace because she was made to feel uncomfortable by her co-worker's on several occasions due to sexual advances that they put forth.

It is thus determined that the claimant has concurrently 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's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning September 19, 2010 and for the nine (9) weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning 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.

H. Abromson, Esq.

H. Abromson, 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 December 27, 2010. 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 01,2010
TH/Specialist ID: WCP2M
Seq No: 001
Copies mailed on December 10, 2010 to:
SHERIKA R. DAVIS
CHALLENGER TRANSPORTATION INC
LOCAL OFFICE #61