

- DECISION -

Claimant:
RHONDA D JEFFERSON
1

Decision No.: 1964-BR-11

Date: April 11, 2011

Appeal No.: 1026888

S.S. No.:

Employer:
JOHNS HOPKINS UNIVERSITY

L.O. No.: 60

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: May 11, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the following findings of fact and conclusions of law. The hearing examiner's decision is reversed.

The claimant worked for the employer, Johns Hopkins University for 17 years. The claimant began working in her current department as a financial analyst for approximately two years prior to her resignation on May 20, 2010.

When the claimant was hired for her current position, she was unsure whether she could properly perform her duties without appropriate training. She was assured that she would

receive the necessary training to complete the required tasks. Because of this assurance, the claimant accepted the position.

Approximately ten percent of the job required that the claimant perform analytical tasks for which she needed training. Ninety percent of the tasks were transactional for which she required no training. After she was assured by Mr. Hayes, her supervisor, that she would receive the necessary training, she accepted the position.

During the first three months of her employment in this position, she received excellent performance evaluations from Mr. Hayes so the claimant was sure that she was doing a good job.

Shortly thereafter, the claimant received constant complaints from Mr. Hayes that she was not performing to the level that he expected of her. The claimant explained to Mr. Hayes that she would if she had received the appropriate training.

The claimant received various less than exemplary evaluations from Mr. Hayes. She responded to them to human resources in writing and verbally. Many of them were later proven to be inaccurate or exaggerated. The claimant further explained to human resources that she had not received the appropriate training that she was assured she would receive.

In March, 2010, Mr. Hayes gave the claimant a three day suspension for failing to perform a task. The suspension was then rescinded after a review by process determined that the claimant did perform the task she was accused of failing to perform.

When the claimant would ask Mr. Hayes for assistance in performing a task, he became angry and upset. So the claimant stopped asking for assistance. She still did not receive the proper training to perform her tasks adequately.

During the course of the claimant's last several months of her employment, Mr. Hayes continually asked her if she had found another job. Mr. Hayes continually degraded the claimant and told her she could not do the job and they could find someone else to do a better job. Mr. Hayes impressed upon the claimant that she needed to find something soon so they could get someone else who was less expensive to be placed in her position.

The claimant finally voluntarily resigned her position on May 20, 2010 even though the employer had not told her of their intention to discharge her.

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)*.

A threshold issue in this case is whether the claimant voluntarily quit or whether the claimant was discharged. For the following reasons, the Board affirms the hearing examiner's decision on this issue.

The burden of proof in this case is allocated according to whether the claimant voluntarily quit or whether the employer discharged the claimant. In a discharge case, the employer has the burden of demonstrating that the claimant's actions rise to the level of misconduct, gross misconduct or aggravated misconduct based upon a preponderance of the credible evidence in the record. *Hartman v. Polystyrene Products Co., Inc.*, 164-BH-83; *Ward v. Maryland Permalite, Inc.*, 30-BR-85; *Weimer v. Dept. of Transportation*, 869-BH-87; *Scruggs v. Division of Correction*, 347-BH-89; *Ivey v. Catterton Printing Co.*, 441-BH-89.

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. 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 (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 (1985); also see *Bohrer v. Sheetz, Inc.*, Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984). 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 (1985). A resignation in lieu of discharge is a discharge under §§ 8-1002, 8-1002.1, and 8-1003. *Miller v. William T. Burnette and Company, Inc.*, 442-BR-82.

The intent to discharge or the intent to voluntarily quit can be manifested by words or actions. "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. 250(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. A resignation submitted in response to charges which *might* lead to discharge is a voluntary quit. *Hickman v. Crown Central Petroleum Corp.*, 973-BR-88; *Brewington v. Dept. of Social Services*, 1500-BH-82; *Roffe v. South Carolina Wateroe River Correction Institute*, 576-BR-88 (where a claimant quit because he feared a

discharge was imminent, but he had not been informed that he was discharged is without good cause or valid circumstances); *also see Cofield v. Apex Grounds Management, Inc.*, 309-BR-91. When a claimant receives a medical leave of absence but is still believes she is unable to return upon the expiration of that leave and expresses that she will not return to work for an undefinable period, the claimant is held to have voluntarily quit. *See Sortino v. Western Auto Supply*, 896-BR-83.

The intent to discharge can be manifested by actions as well as words. The issue is whether the reasonable person in the position of the claimant believed in good faith that he was discharged. *See Dei Svaldi v. Martin Taubenfeld, D.D.S., P.A.*, 1074-BR-88 (the claimant was discharged after a telephone conversation during which she stated her anger at the employer and the employer stated to her, "If that's the way you feel, then you might as well not come in anymore." The claimant's reply of "Fine" does not make it a quit). *Compare, Lawson v. Security Fence Supply Company*, 1101-BH-82. A quit in lieu of discharge is a discharge for unemployment insurance purposes. *Tressler v. Anchor Motor Freight*, 105-BR-83.

"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 claimant who resigns in lieu of discharge does not show the requisite intent to quit under *Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975)*. Therefore, a resignation in lieu of discharge shall be treated as a discharge under Section 8-1002 or 8-1003 of the law. *Miller v. William T. Burnette and Company, Inc., 442-BR-82*.

Where a claimant quit because he feared a discharge was imminent, but he had not been informed that he was discharged, the resignation is without good cause or valid circumstances. *Roffe v. State of South Carolina Wateroe River Correction Institute, 576-BR-88*.

The claimant's resignation due to numerous disciplinary warnings and reprimands for low production does not constitute good cause. However, the claimant has valid circumstances where the low production and consequential reprimands were caused by the employer's constant shifting of the claimant from one machine to another. *Harris v. Del Mar Manufacturing, Inc., 2245-BR-83*.

A resignation in order to avoid facing charges which may lead to discharge is a voluntary quit without good cause and without valid circumstances under Section 8-1001. *Brewington v. Department of Social Services, 1500-BH-82*.

An exception to the rule in the *Brewington* case might be found where an employer intentionally brought personnel charges against an employee in bad faith or for purposes of harassment. The burden would be on the claimant to show bad faith or harassment. However, the mere presence of a police officer and a statement that criminal charges would be filed against the claimant for theft is not sufficient to constitute harassment. Therefore, the claimant's resignation in lieu of facing charges constitutes a voluntary quit without good cause or valid circumstances. *Smith v. Maryland Training School for Boys, 359-BR-84*.

The claimant misunderstood the position of secretary, which she took in good faith, which resulted in the claimant spending one-half of her time doing non-secretarial work. The claimant's leaving was for valid circumstances. *Wingate v. American Trading and Production Corporation, 203-BR-87.*

At the time of the claimant's hiring, he discussed with the employer the fact that he was unfamiliar with the type of fork lift used by the employer. Both parties agreed that the claimant would try to learn the job. The claimant received no training. After three weeks, the claimant found that he could not use that type of fork lift, despite making good faith efforts to learn, and he quit. The claimant had good cause for quitting the job. *Smith v. Circuit City Stores, Inc., 1747-BR-93.*

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 hearing examiner based his credibility determination on what he perceives as conflicting statements. The hearing examiner's credibility determinations are not demeanor-based.

Because the hearing examiner's credibility determinations were not demeanor-based, the Board does not owe the hearing examiner "special deference" as to his findings in this regard. *See Dept. of Health and Mental Hygiene v. Shrieves, 100 Md. App. 283, 299 (1994).* The Court of Appeals distinguishes between: (1) testimonial inferences, "credibility determinations based on demeanor," and (2) derivative inferences, "inferences drawn from the evidence itself." *Shrieves, 100 Md. App. at 299* (citations omitted). The Court explained:

Weight is given the administrative law judge's determinations of credibility for the obvious reason that he or she "sees the witnesses and hears them testify, while the Board and the reviewing court look only at the cold records."....But it should be noted that the administrative law judge's opportunity to observe the witnesses' demeanor does not, by itself, require deference with regard to his or her derivative inferences. Observation makes weighty only the observers testimonial inferences.

Shrieves, 100 Md. App. at 299-300.

The Board does not adopt the hearing examiner's credibility determinations regarding the employer's witnesses.

The hearing examiner derived his credibility determinations in this regard from what he perceived as conflicting evidence in the record:

The claimant provided credible testimony that she informed her employer that she would need training to fulfill all of the tasks of her new job if she were to be hired. Her employer agreed. After some time in the position, she found herself unable to perform many tasks despite her supervisor taking time to train her. Although the claimant testified that she felt belittled and harassed when her supervisor informed her that she was not performing up to the standards of the position, no evidence was provided by the claimant that her employer's

reprimands regarding her substandard performance were unreasonable. The claimant eventually resigned from her position by letter with no explanation to her employer as to why she was resigning. Although the claimant testified that she resigned because she assumed her termination was imminent, the employer offered credible uncontroverted testimony that it had no plans to terminate her.

The Board does not give deference to the hearing examiner's credibility determinations. There are a substantial number of relevant facts that the hearing examiner did not consider in the record. Significantly are the facts where the claimant's supervisor, Mr. Hayes, began to write the claimant up for poor performance although the claimant was assured by Mr. Hayes when he hired her, that he train her and show her how to do the tasks. When the claimant would go to Mr. Hayes for assistance, he would become angry because she was interrupting him.

Further, Mr. Hayes would ask the claimant daily if she found another job. This is strong indicia that the claimant was in jeopardy of losing her employment.

The claimant was wrongfully suspended for three days after being written up by Mr. Hayes for a failure to perform a task. The employer later discovered that the task was performed and the claimant was reinstated. Mr. Hayes attempted to get the claimant discharged by wrongfully accusing her of the poor performance which led to her suspension. Upon her return, Mr. Hayes continued to ask the claimant if she found a new job.

The Board finds that Mr. Hayes was prodding the claimant into quitting her position. Thus, the claimant did not manifest the requisite intent to "voluntarily" leave her employment; she was coerced into doing it by her supervisor.

The employer was aware, at the claimant's hire date that she needed to be trained to perform the duties of her job. The claimant acknowledged that she would receive that training. The claimant did not receive the requisite training for the position. Because of the lack of training, the claimant was unable to perform her duties to the level that was expected of her.

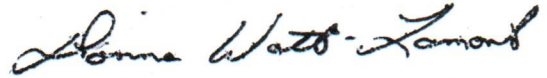
The employer should note that any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. *Md. Code Ann., Lab. & Empl. Art., § 8-611(e)(1).*

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

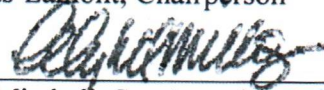
DECISION

It is held that the claimant left work voluntarily, without good cause but for 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 May 16, 2010 and the three weeks immediately following.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mr

Copies mailed to:

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JOHNS HOPKINS UNIVERSITY

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

RHONDA D JEFFERSON

SSN #

Claimant

vs.

JOHNS HOPKINS UNIVERSITY

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: 1026888

Appellant: Claimant

Local Office : 60 / TOWSON CALL
CENTER

August 26, 2010

For the Claimant: PRESENT , AL JEFFERSON

For the Employer: PRESENT , JEFF SCHER, PAUL HAYES

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 August 16, 1993. At the time of separation, the claimant was working as a financial analyst. The claimant last worked for the employer on or about May 20, 2010, before quitting.

In her job interview, the claimant notified the employer that she was unsure that she could adequately perform job duties of the position because she needed further training to complete some of the tasks required. The employer assured her that she would receive any training necessary to complete the tasks of the job. The claimant accepted the position.

Within the claimant's first ninety days in the position, she received a positive review for her work. However, soon thereafter she began receiving negative reviews. She was "written up" for both tasks that she was unable to complete due to a lack of training and for tasks that she was qualified to complete but simply did not.

The claimant's supervisor had an open door policy and agreed to train the claimant. The claimant received training from her supervisor on several occasions. However, her work product did not improve. When her supervisor informed her that her work product was not up to standard on several occasions, the claimant felt belittled and harassed. Assuming that her termination was imminent, she resigned by letter without providing her employer with an explanation. The claimant was not in danger of being terminated at the time she 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.

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 not been met.

The claimant provided credible testimony that she informed her employer that she would need training to fulfill all of the tasks of her new job if she were to be hired. Her employer agreed. After some time in the position, she found herself unable to perform many tasks despite her supervisor taking time to train her. Although the claimant testified that she felt belittled and harassed when her supervisor informed her that she was not performing up to the standards of the position, no evidence was provided by the claimant that her employer's reprimands regarding her substandard performance were unreasonable. The claimant

eventually resigned from her position by letter with no explanation to her employer as to why she was resigning. Although the claimant testified that she resigned because she assumed her termination was imminent, the employer offered credible and uncontroverted testimony that it had no plans to terminate her.

It is thus determined that the claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or 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 or valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. Benefits are denied for the week beginning May 16, 2010 and until the claimant becomes reemployed and earns at least 15 times the claimant's weekly benefit amount in covered wages and thereafter becomes unemployed through no fault of the claimant.

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 September 10, 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 : August 12,2010
TH/Specialist ID: UTW7D
Seq No: 001
Copies mailed on August 26, 2010 to:
RHONDA D. JEFFERSON
JOHNS HOPKINS UNIVERSITY
LOCAL OFFICE #60
JEFF SCHER
JOHNS HOPKINS UNIVERSITY