

**- DECISION -**

Claimant:  
KATHY A JENKINS

Decision No.: 2252-BR-11

Date: May 16, 2011

Appeal No.: 1017937

Employer:  
ADDISON RD DAY CARE CTR INC

S.S. No.:

L.O. No.: 63

Appellant: Board Assumed Jurisdiction

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

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**- 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: June 15, 2011

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**REVIEW ON THE RECORD**

After a review on the record, the Board deletes the second sentence of the first paragraph and the last sentence of the last paragraph of the hearing examiner's decision. The Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

Prior to the last conversation between the claimant and employer, the claimant advised the employer that she did not think she could afford to obtain new transportation. The claimant stated that she did not know when she would be able to return to this employment. The employer told the claimant that the job could not be held open indefinitely.

The Board concludes that these facts require different conclusions of law.

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)*.

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*.

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*.

Here, it was the claimant's statement to her employer that she did not believe she could afford a vehicle and did not know what she might be able to return to work which caused the employment relationship to end. The claimant may have wanted to retain her employment, but the claimant did not act to do so. The claimant did not have reliable transportation and could not get reliable transportation. Most importantly, the claimant's prior vehicle was repossessed. The claimant lost her transportation due to her own lack of diligence in maintaining payments. The claimant then expected the employer to, once again, provide financial assistance. It was the claimant's actions, in placing herself in a position to have no transportation, which led to the end of the employment. Thus, this was a voluntary quit.

The claimant denied that she quit in her testimony at the hearing. She continued to assert that the employer discharged her by telling the claimant that the position could not be held open indefinitely and by advising the claimant to apply for benefits. However, the claimant's initial statement to the claims examiner was that she did quit.

The employer's statement that the claimant should apply for unemployment benefits was made in response to the claimant's advice that she did not know when she could return to work. When the claimant told the employer this, the claimant was effectively resigning her position. The employer had already held her position open for the claimant but could not reasonably be expected to continue to do so indefinitely. It was the claimant's responsibility to report for work; it was not the employer's responsibility to effectuate this return to work.

The claimant, in this case, bears the burden of establishing that she left the employment for reasons which constitute good cause or valid circumstances. Because good cause must be connected to the work, the claimant cannot establish this. The claimant left because she did not have transportation. Transportation is a personal matter and the lack thereof will not constitute good cause.

A reason for quitting which is of a compelling or necessitous reason may be valid circumstances. Certainly the claimant's lack of transportation may have necessitated her leaving the employment. However, this lack of transportation did not occur through no fault of the claimant. The Board has

previously held, in a precedent decision, that a claimant who has lost his transportation through his own fault when his car was repossessed ... had no valid circumstances for voluntarily quitting. See *Young v. Robert F. Thorne, Sr.*, 834-BR-88.

The Board cannot find, under these facts, that the claimant had either good cause or valid circumstances for leaving her employment.

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

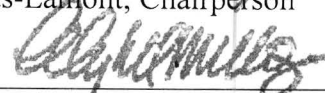
It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause or valid circumstances, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. The claimant is disqualified from receiving benefits from the week beginning April 18, 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.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

RD/jm

Copies mailed to:

KATHY A. JENKINS

ADDISON RD DAY CARE CTR INC

Susan Bass, Office of the Assistant Secretary

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

KATHY A JENKINS

SSN #

**Claimant**

Vs.

ADDISON RD DAY CARE CTR 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: 1017937  
Appellant: Claimant  
Local Office : 63 / CUMBERLAND  
CLAIM CENTER

June 26, 2010

**For the Claimant:** PRESENT, FAYE STEPNEY

**For the Employer:** PRESENT, BETTYE MAGEE-PRICE

**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 commenced her employment on May 5, 1997 and her last physical day worked was March 26, 2010. The claimant was discharged from her employment on April 19, 2010. At the time of her separation from employment the claimant worked full-time as a teacher at a wage of \$10.50 an hour.

The claimant has, for about her last two years of employment resided in St. Mary's County (Lexington Park, Maryland). This is about 1 ½ hours each way from her place of employment which is in Capitol Heights, Maryland in the Metro Washington area. There's no public transportation between those two locations. On March 29, 2010, the claimant's car was repossessed. The claimant notified Bettye Magee-Price, Director, of the above that same day. Ms. Magee-Price immediately offered to help the claimant out, financially, in order to enable her to obtain a replacement vehicle. The claimant could not afford the down

payment on a replacement vehicle. She had no money to spare. Ms. Magee-Price had made the claimant numerous loans in the past and some of them in amounts in excess of \$2,000.00. The purpose of these loans were to help keep the claimant financially afloat. Ms. Magee-Price knew, or should have known at all relevant times that the claimant could not afford to make a down payment on a car. She simply had no money to spare. She was living from pay check to pay check.

In reliance upon the above, the claimant began car hunting. The claimant made good faith, diligent efforts to secure a replacement vehicle. The claimant checked out for sale advertisements and also contacted a variety of local dealerships. On a Saturday in early April 2010, the claimant found a car that she was interested in at the Goldstar Auto Dealership in Waldorf, Maryland. This was a 2002 Pontiac Gram Am. The dealership faxed paper regarding the above to Ms. Magee-Price that day.

Ms. Magee-Price spoke to the claimant on April 16, 2010. At that time, she advised the claimant that the employer would have in fact, not be assisting the claimant with the full required down payment. She told the claimant that the employer could assist with a \$1,000.00 loan for the down payment, but could not assist with a \$2,000.00 loan. The claimant could not afford any down payment at all, let alone a \$1,000.00 down payment, which is the sum she would have had to come up with to make good the \$1000.00 shortfall noted above.

Ms. Magee-Price advised the claimant that same day, that she would not hold the claimant's job for the claimant indefinitely. Prior to this time, the claimant had been on an indefinite leave of absence without pay so as to enable the claimant to obtain a replacement vehicle.

On April 19, 2010, Ms. Magee-Price and the claimant again spoke via telephone. In that telephone conversation, Ms. Magee-Price advised the claimant to file for unemployment insurance. The claimant, quite reasonably, took this to mean, that she no longer had a job.

## CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits where he or she is discharged or suspended from employment because of behavior which demonstrates gross misconduct. The statute defines gross misconduct as conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training, et al., 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

Md. Code, Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits when he or she was discharged or suspended from employment because of behavior that demonstrates gross misconduct. The statute defines gross misconduct as repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the claimant is discharged or suspended as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been defined as "...a transgression of some

established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises." Rogers v. Radio Shack, 271 Md. 126, 132 (1974).

The phrase "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, of his or her own freewill, terminated the employment. Allen v. CORE Target City Program, 275 Md 69, 338 Ad 237 (1975)

## EVALUATION OF EVIDENCE

The preponderance of the credible evidence in the instant case establishes that the claimant was discharged from her employment. She did not voluntarily quit. The evidence does not establish that the claimant, by her own choice intentionally, of her own freewill, terminated the employment. The claimant took active measures to try to obtain a replacement vehicle. She did this upon the representations of the employer's director, Ms. Magee-Price that she, Ms. Magee-Price, would help the claimant out with the down payment. The claimant knew she could not afford any down payment at all, no matter how small.

On April 16, 2010, Ms. Magee-Price, in essence reneged on her agreement. The claimant had repeatedly gone to Ms. Magee-Price for loans in order to keep herself financially afloat. Ms. Magee-Price knew, or should have known that the claimant could not afford a \$1,000.00 down payment on a car. She had no money. That same day, Ms. Magee-Price told the claimant that the employer would not hold the job open for her indefinitely. Three days later, Ms. Magee-Price advised the claimant to file for unemployment insurance benefits. The claimant reasonably understood this to mean that she no longer had a job. This understanding was not only reasonable, it was accurate.

Based upon the demeanor, this Hearing Examiner finds the claimant's testimony to be more credible than that of the employer witness, Ms. Magee-Price. The claimant was exceptionally sincere and credible.

## DECISION

IT IS HELD THAT the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1002 or 8-1003. No disqualification is imposed based upon the claimant's separation from employment with ADDISON RD DAY CARE CTR INC. 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](mailto: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 reversed.



A. Scheinberg, 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 August 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: May 26, 2010

AEH/Specialist ID: WCU3K

Seq No: 001

Copies mailed on July 26, 2010 to:



KATHY A. JENKINS  
ADDISON RD DAY CARE CTR INC  
LOCAL OFFICE #63