

- DECISION -

Claimant:	Decision No.:	2440-BR-13
COURTNEY P HOLSTEIN	Date:	June 28, 2013
	Appeal No.:	1219755
	S.S. No.:	
Employer:	L.O. No.:	63
ADVANCED EDUCATION SYSTEMS	Appellant:	CLAIMANT - REMAND FROM
	COURT	

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: July 26, 2013

PROCEDURAL HISTORY

The claimant filed a *Petition for Judicial Review* with the Circuit Court of Baltimore County. The Board of Appeals filed a *Motion for Remand* with the Circuit Court. The Circuit Court for Baltimore County ordered this matter remanded to the Board of Appeals for review of the reason the employer accelerated the claimant's separation from her employment and to determine whether or not the claimant is entitled to receive unemployment insurance benefits for that one week.

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law:

The claimant submitted a resignation letter to her employer dated April 23, 2012 advising her employer that she was resigning. The claimant provided two weeks notice stating that her last day of work would be May 4, 2012. The claimant's employer, however, accelerated the claimant's last day of work to April 27, 2012, one week early.

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)*.

The Board has consistently held that when an employee resigns, gives notice and provides a date as her last day of employment. If the employer accelerates her final day of work, the employer has discharged for that time period and it should be determined whether or not the claimant is entitled to benefits for that time frame. Therefore, the question before the Board is whether the claimant was discharged for cause for the week that the claimant's employer accelerated her discharge.

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*.

As the Court of Appeals explained in *Department of Labor, Licensing and Regulation v. Hider, 349 Md. 71, 82, 706 A.2d 1073 (1998)*, "in enacting the unemployment compensation program, the legislature created a graduated, three-tiered system of disqualifications from benefits based on employee misconduct. The severity of the disqualification increases in proportion to the seriousness of the misconduct." *Dept. of Labor, Licensing & Regulation v. Boardley, 164 Md. 404, 408 fn.1 (2005)*.

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from 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, within the meaning of Section 8-1003 of the Labor and Employment Article. (See, *Rogers v. Radio Shack*, 271 Md. 126, 314 A.2d 113).

Simple misconduct within the meaning of § 8-1003 does not require intentional misbehavior. *DLLR v. Hider*, 349 Md. 71 (1998); also see *Johns Hopkins University v. Board of Labor, Licensing and Regulation*, 134 Md. App. 653, 662-63 (2000)(psychiatric condition which prevented claimant from conforming his/her conduct to accepted norms did not except that conduct from the category of misconduct under § 8-1003). Misconduct must be connected with the work; the mere fact that misconduct adversely affects the employer's interests is not enough. *Fino v. Maryland Emp. Sec. Bd.*, 218 Md. 504 (1959). Although not sufficient in itself, a breach of duty to an employer is an essential element to make an act connected with the work. *Empl. Sec. Bd. v. LeCates*, 218 Md. 202 (1958). Misconduct, however, need not occur during the hours of employment or the employer's premises. *Id.*

Without sufficient evidence of a willful and wanton disregard of an employee's obligations or gross indifference to the employer's interests, there can be no finding of gross misconduct. *Lehman v. Baker Protective Services, Inc.*, 221-BR-89. Where a showing of gross misconduct is based on a single action, the employer must show the employee demonstrated gross indifference to the employer's interests. *DLLR v. Muddiman*, 120 Md. App. 725, 737 (1998).

In determining whether an employee has committed gross misconduct, "[t]he important element to be considered is the nature of the misconduct and how seriously it affects the claimant's employment or the employer's rights." *Dept. of Econ. & Empl. Dev. v. Jones*, 79 Md. App. 531, 536 (1989). "It is also proper to note that what is 'deliberate and willful misconduct' will vary with each particular case. Here we 'are not looking simply for substandard conduct...but for a willful or wanton state of mind accompanying the engaging in substandard conduct.'" *Employment Sec. Bd. v. LeCates*, 218 Md. 202, 207 (1958)(internal citation omitted); also see *Hernandez v. DLLR*, 122 Md. App. 19, 25 (1998).

Aggravated misconduct is an amplification of gross misconduct where the claimant engages in "behavior committed with actual malice and deliberate disregard for the property, safety or life of others that...affects the employer, fellow employees, subcontractors, invitees of the employer, members of the public, or the ultimate consumer of the employer's products or services...and consists of either a physical assault or property loss so serious that the penalties of misconduct or gross misconduct are not sufficient."

Where the claimant gives two weeks' notice and the employer accelerated the claimant's leaving to be effective immediately, the penalty under § 8-1001 of the law does not commence until two weeks after his separation from employment. *Stefan v. Levenson and Klein*. 1794-BR-82.

In a similar case, the claimant submitted a resignation giving two weeks notice but was discharged prior to the expiration of the notice period for an act which did not constitute misconduct. Unlike *Salisbury v. Levinson and Klein*, *supra*, the claimant was not discharged for an independent reason. The discharge was primarily an acceleration of the resignation date. Therefore, the claimant will be considered to voluntarily quit under Section 8-1001, from the effective date of the resignation. However, the claimant is not

disqualified from benefits during the notice period. *Nazarini v. Chesapeake Bay Seafood House, 294-BR-86.*

In the instant case, the credible evidence established that the employer accelerated the claimant's final day of employment because the claimant had completed all of her projects and her services were no longer needed. The claimant was not discharged from the week of April 29, 2012 for any misconduct.

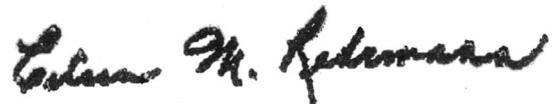
The Board finds, based on a preponderance of the credible evidence, that the employer did not meet its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1002 or 8-1003.* The claimant is eligible for unemployment benefits for the week beginning April 29, 2012 and ending May 5, 2012, provided the claimant meets the other eligibility requirements of Maryland Unemployment Law.

DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003 from the week beginning April 29, 2012 and ending May 5, 2012. No disqualification is imposed based upon the claimant's separation from employment with ADVANCED EDUCATION SYSTEMS.

It is further held that the claimant 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 May 6, 2012 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 modified.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

KJK

Copies mailed to:

COURTNEY P. HOLSTEIN
ADVANCED EDUCATION SYSTEMS
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

COURTNEY P HOLSTEIN

SSN #

Claimant

vs.

ADVANCED EDUCATION SYSTEMS

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: 1219755

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

June 26, 2012

For the Claimant: PRESENT

For the Employer: PRESENT , GINA HAMMERSLA

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, Courtney Holstein, began working for this Employer, Advanced Education Systems, on or about November 15, 2010. At the time of separation, the Claimant was working as an education administrator, earning wages in the amount of \$40,500.00 per year. The Claimant last worked for the Employer on April 27, 2012 before voluntarily resigning her position to accept other employment.

The Claimant accepted a position as a relationship liaison for M&T Realty Capital Corp at a salary of \$41,000.00 per year. Her start date for the position was May 14, 2012. The new position presented an opportunity for growth and the Claimant believed it would be a better fit.

On April 23, 2012, the Claimant submitted a letter of resignation indicating her last day of work to be May 4, 2012. At the time, continuing work was available to the Claimant. Later, on April 27, 2012, the President, Pam Junot, informed the Claimant that her services were not needed for the final week.

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.

In Total Audio-Visual Systems, Inc. v. DLLR, 360 Md. 387 (2000), the Court held that an individual who has left his or her employment to accept other employment has not left his or her job for good cause as defined in Section 8-1001(b)(1) of the Labor & Employment Article of the Annotated Code of Maryland. This is because quitting ones job for purely economic reasons is neither necessitous nor compelling. See also Plein v. Dep't of Labor Licensing & Regulation, 369 Md. 421, 800 A.2d 757 (2002); Gagne v. Potomac Talking Book Services, Inc., 374-BH-03.

However, a finding of valid circumstances is appropriate if the claimant can show that accepting the alternative employment was "of such a necessitous and compelling nature that the individual had no reasonable alternative other than leaving the employment." Gaskins v. UPS, 1686-BR-00.

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 the case at bar, that burden has not been met.

Under Maryland law, voluntarily quitting one job to accept another cannot constitute a quit for good cause as a matter of law. See Total Audio-Visual, *supra*. Furthermore, pursuant to the Board of Appeals decision in Gagne, *supra*, a voluntary quit for purely economic reasons, as in the instant case, is a quit for neither

good cause nor valid circumstances. The Claimant had other personal reasons which were insufficient to provide a finding of valid circumstances. Therefore, benefits must be denied at this time.

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 April 29, 2012 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 affirmed.



A K Thompson, 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 to Petition for Review

Any party may request a review 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 July 11, 2012. 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 : June 21,2012
CH/Specialist ID: WCU61
Seq No: 001
Copies mailed on June 26, 2012 to:
COURTNEY P. HOLSTEIN
ADVANCED EDUCATION SYSTEMS
LOCAL OFFICE #63