

**- DECISION -**

Claimant:  
EVELYN D HARDUVEL

Decision No.: 2598-BR-14

Date: October 1, 2014

Appeal No.: 1405294

S.S. No.:

Employer:  
SHARON L ROSE LLC

L.O. No.: 63

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: October 31, 2014

---

**REVIEW OF THE RECORD**

After a review of the record, the Board makes the following findings of fact and reverses the decision of the hearing examiner.

The claimant was employed from February 15, 2003 to January 8, 2013, as a Spa Coordinator. The claimant became separated from this employment as a result of a voluntary quit.

The claimant had been employed for ten years. The claimant, in the course of performing her duties, handled monies paid for services and tips left by clients for her co-workers.

During the claimant's employment she and the employer had disagreements and the claimant was unhappy with some incidents that occurred. However at no time did the employer discipline the claimant. Nor did the claimant feel the need to quit until the incidents of January 8, 2013.

On January 8, 2013, the employer's granddaughter/employee, Sara Kip, accused the claimant of stealing tips left by two of her clients. The claimant denied taking the tips. Ms. Kip complained to the employer while the claimant was working at the front desk, the employer approached her and accused the claimant of taking the tips. The claimant again denied taking the tips. Both the claimant and the employer raised their voices. The employer sent the claimant home without pay.

There was no proof that Ms. Kip's clients had left tips for her.

The claimant was upset by the accusations of theft and decided to resign. The claimant submitted a letter of resignation.

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)*.

"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.

The question to be decided in this case was whether or not the claimant's decision to resign was reasonable under the circumstances. The Board concludes that her resignation was reasonable and with good cause. The claimant was a long term employee with no formal disciplinary actions against her. While the employer may never have actually spoken words directly accusing the claimant of theft, her language and actions clearly establish that she believed the claimant had taken the tips and was accusing her of such. The employer confronted the claimant about the tips as soon as her granddaughter

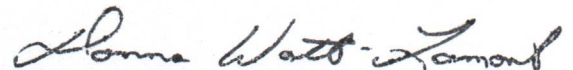
complained to her. The employer did not discuss this matter with the claimant in a private area, but instead at the front desk where the claimant worked and clients could hear. When the claimant denied taking the tips, the employer sent her home without pay. The Board finds the claimant's belief that she was being accused of theft to not only be reasonable, but to be correct.

The Board finds based on a preponderance of the credible evidence that the claimant meet her burden of demonstrating that she quit this employment for good cause within the meaning of § 8-1001 for quitting this employment. The 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 SHARON L ROSE LLC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

EVELYN D. HARDUVEL

SHARON L ROSE LLC

D. H. ANDREAS LUNDSTEDT ESQ

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

EVELYN D HARDUVEL

SSN #

**Claimant**

vs.

SHARON L ROSE LLC

**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: 1405294

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

March 21, 2014

**For the Claimant:** PRESENT, JAMES HARDUVEL, LASHAWNDA WILLIAMSON

**For the Employer:** PRESENT, SHARON ROSE

**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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

**FINDINGS OF FACT**

The Claimant (Evelyn Harduvel) began working for this Employer (Sharon L. Rose, LLC) on February 15, 2003. At the time of separation, the Claimant was working as a Spa Coordinator. The Claimant last worked for the Employer on January 8, 2013, before quitting because she was upset with the Owner.

On January 8, 2013, there were two (2) occasions at the Employer's salon that the Owner's (Sharon Rose) granddaughter (Sara Kip) did not receive an envelope with customer monetary tips contained therein. Ms. Kip approached the Claimant regarding the matter and the Claimant explained that no monies had been left with her nor had she taken any funds. On the same day, Ms. Rose approached the Claimant to ask her what was going on between the Claimant and Ms. Kip. The Claimant believed that Ms. Rose was accusing her of stealing. Ms. Rose never accused the Claimant of theft nor did she infer the same. The conversation

became heated and Ms. Rose asked the Claimant to leave early for day – at 5:30 p.m.

Thereafter, the Claimant called off work on January 9, 10 and 11, 2014. (Agency's Exhibit 1). On January 11, 2014, the Claimant submitted a letter of resignation to the Employer because she believed that she had been accused of theft and was not being treated fairly. (Claimant's Exhibit 1). The Claimant felt too upset to return back to work for the Employer. The Claimant further believed that throughout the years she had been accused of things that she had not done and treated unfairly. Toward the end of the Claimant's employment, the Claimant requested and Ms. Rose complied with the Claimant's requests not to work the first Saturday of the month and not to close-up on certain nights as a result of the Claimant's medical condition and for personal reasons.

Ms. Rose never issued any warnings or disciplinary actions against the Claimant for any disagreement they may have had. Ms. Rose did not use profane or abusive language when addressing the Claimant when they may have had a disagreement. The Claimant would further defend herself when she believed she was wrongfully accused of something by Ms. Rose. Both the Claimant and Ms. Rose have on occasion raised their voices to one-another when they had a disagreement. However, after the final incident the Claimant decided to quit.

### 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 that by a preponderance of the evidence that she voluntarily quit his 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 expressed the requisite intent to end her employment when she submitted her letter of resignation. The Claimant had various disagreements with the Employer over the last several years of her employment. The Claimant believed that she was not being treated fairly and/or was treated disparately. However, the Claimant candidly admitted the conduct that she disapproved of had gone on for years. Therefore, the Claimant is deemed to have condoned the conduct of her Employer. No evidence was produced at the hearing of this matter to prove that the Employer ever used profane or abusive language towards the Claimant. The Claimant further admitted that she believed she was being wrongfully accused of something that she defended herself in response thereto and the parties would sometimes raise their voices to one another. The Claimant further admitted that the Employer never issued any disciplinary actions or reprimands to the Claimant regarding any of her workplace conduct. Consequently, the Claimant has failed to prove that the reason that she quit her job was caused by actions of the employing unit or that her reasons were of such a necessitous and compelling nature that she had no reasonable alternative other than to sever her employment.

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 January 5, 2014 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 reversed.

*L Williamson*

---

L Williamson, 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 April 07, 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: March 19, 2014  
BLP/Specialist ID: WCU1M  
Seq No: 001  
Copies mailed on March 21, 2014 to:

EVELYN D. HARDUVEL  
SHARON L ROSE LLC  
LOCAL OFFICE #63