

- DECISION -

Claimant:
ARTHUR PIERRE ANTOINE

Decision No.: 2678-BR-12

Date: July 16, 2012

Appeal No.: 1114601

S.S. No.:

Employer:
ORKIN EXTERMINATING CO INC
ORKIN INC

L.O. No.: 63

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: August 15, 2012

PREAMBLE

The claimant filed a *Petition for Review* in the Circuit Court for Charles County. The Board of Appeals, Department of Labor, Licensing and Regulation made a motion before the court to remand the case to the Board for a determination of whether the claimant voluntarily quit his employment for reasons that constitute good cause or valid circumstance with the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1001*. The Circuit Court for Charles County remanded the case to the Board on April 11, 2012.

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision:

The claimant worked full time as a route manager/pest technician from March 3, 2009 until he voluntarily quit on February 28, 2011.

The claimant quit his position because his manager created a hostile work environment for the claimant by the manager's racial comments, homosexual jokes and jokes about the claimant. When the manager first came and started his slurs and jokes, the claimant told him that he thought they were unethical, unprofessional and that he was uncomfortable with them. The manager did not change his behavior.

The claimant first contacted the 800 telephone number on his paycheck to complain of his manager's behavior. When the claimant received no response, the claimant complained to the service managers about the claimant's behavior to no avail. The claimant, then, contacted the regional manager to complain about the manager's behavior. This manager's response was that the new manager would calm down and told the claimant to be patient. On the claimant's last day he was running late, had an extra assignment to do for the manager. Again, his manager made a derogatory comment. The claimant could not take any more of the manager's derogatory comments, slurs or jokes and voluntarily quit.

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)*.

"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.

In a similar to the case at bar, the claimant had good cause to quit where the employer makes personal and derogatory comments to the claimant of a racially offensive nature, about the claimant and his girlfriend. *Manuel v. Osika-Cooper, Inc., 216-BH-83*. In the instant case, the manager admitted to occasionally using abusive language but thought that he and the claimant had good rapport so that the manager's behavior was acceptable.

The claimant used the company's chain of command to complain about his manager's behavior. From the record before the Board, the company did not take any action to remedy the situation. The claimant finally quit when nothing was done.

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 Board finds based on a preponderance of the credible evidence that the claimant met his burden of demonstrating that he quit for good cause within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1001*. The decision of the hearing examiner shall be reversed for the reasons stated herein.

DECISION

It is held that the claimant voluntarily quit, 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 ORKIN EXTERMINATING CO., INC.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

ARTHUR PIERRE ANTOINE
ORKIN EXTERMINATING CO INC
ORKIN EXTERMINATING CO INC
GWENDOLYN K. NIGHTENGALE ESQ.
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE REMAND APPEALS DECISION

ARTHUR PIERRE ANTOINE

SSN #

Claimant

vs.

ORKIN EXTERMINATING CO INC
ORKIN 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: 1114601
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

December 31, 2012

For the Claimant: PRESENT

For the Employer: PRESENT, TERRY GROFT, STEPHEN KULP, CHRISTOPHER HUMBER, ESQ.

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).

PREAMBLE

A De Novo hearing was conducted on December 19, 2012, pursuant to a Remand Order issued by the Board of Appeals on November 9, 2012.

FINDINGS OF FACT

The claimant, Arthur Antoine, began working for Orkin Exterminating CO INC on or about March 3, 2009. At the time of separation, the claimant was working full-time as a route manager, making \$2,500.00 a month. The claimant last worked for the employer on or about February 28, 2011, before resigning.

The claimant resigned abruptly on February 28, 2011, after he was kicked out of his home by his wife. The claimant tearfully quit his position when he met with his manager, Steve Kulp, and tendered his keys and uniform. He planned to relocate to Florida.

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 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 credible testimony and evidence established that the claimant quit his position with the employer to move to Florida after a domestic argument with his wife.

The claimant testified at length about his inter-personal problems with Mr. Kulp, most of which dated back to 2009. The testimony established that back in 2009, the claimant complained to upper management about Mr. Kulp and remedial measures were undertaken to address his concerns. Mr. Kulp may have used inappropriate, even racist language, in the early days of his management of the local branch.

As to the events of 2011, the claimant attempted to establish that the real reason for resigning was that Mr. Kulp had called him the N-Word on February 28, 2011. By his own admission, this was the "precipitating event" that caused the claimant to quit on the spot, notwithstanding the history between him and Mr. Kulp. Therefore, it is appropriate to examine the evidence supporting this particular claim.

The claimant gave three different versions of the events of February 28, 2011.

The first version came about when the claimant told the Fact Finder from the Agency that on February 28, 2011, he had been told by Mr. Kulp that "You black guys are always late." This statement was the alleged precipitating event that caused the claimant to quit. (Agency Exhibit No. 1)

The second version was tendered when the claimant sent in an anonymous email to the employer on April 11, 2011 that alleged that Mr. Kulp called black employees the word "Boy." (Employer's Exhibit No. 2) The claimant falsely testified that he sent the email prior to his resignation, but the email is clearly dated April 11, 2011.

The third and final version was delivered at the hearing, when the claimant testified that Mr. Kulp had called him the N-Word, causing to him resigning on the spot. During the hearing, he maintained steadfastly, that he impulsively quit when the N-Word was uttered by Mr. Kulp. There was no room for equivocation or a miscommunication, according to the claimant.

Notwithstanding the claimant's pointed testimony, his credibility was eroded during the hearing when these three different versions were made part of the record. In contrast, Mr. Kulp credibly testified that the claimant quit because of domestic issue with his wife caused him to decide to move to Florida.

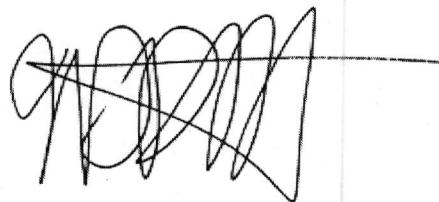
It is hard to believe that the claimant could become confused as to exactly what Mr. Kulp allegedly told him on February 28, 2011. If he had used the N-Word, and if this had truly caused the claimant to resign abruptly, it is reasonable to expect that his version of events would have been consistent at the Fact Finding level and even in his anonymous email to upper management.

As the party who bore the burden of proof, the inconsistencies in his presentation caused the claimant to fall short of establishing, by a preponderance of the credible evidence, that he quit for good cause or valid circumstances.

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 February 27, 2011 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.



W Rosselli, 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 January 15, 2013. 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 19, 2012

DW/Specialist ID: WCU4C

Seq No: 001

Copies mailed on December 31, 2012 to:

ARTHUR PIERRE ANTOINE

ORKIN EXTERMINATING CO INC

LOCAL OFFICE #63

ORKIN EXTERMINATING CO INC

GWENDOLYN K. NIGHTENGALE ESQ.

CHRISTOPHER HUMBER ESQ.

JOHN B. FLOOD ESQ.