

**- DECISION -**

Claimant:  
GWENDOLYN N COUNCIL

Decision No.: 279-BR-15

Date: February 4, 2015

Appeal No.: 1421084

Employer:  
JANJER ENTERPRISES INC

S.S. No.:

L.O. No.: 65

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.

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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: March 06, 2015

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**REVIEW OF THE RECORD**

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on October 6, 2014. That Decision held that the claimant had voluntarily quit her employment, without good cause but with valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were not allowed for the week beginning June 1, 2014, and the following nine weeks:

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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. *Md. Code Ann., Lab. & Empl. Art., §8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered the opportunity to present closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts are sufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact and conclusions of law but finds that only the minimum five-week penalty is warranted on the facts of this case. The Board shall modify the hearing examiner's decision accordingly.

*Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*, 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 valid circumstance for voluntarily leaving work is a substantial cause 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. To establish a valid circumstance for leaving one's employment, a claimant is expected to have attempted to adjust the grievance, or explored other options, prior to leaving unless such action would have been futile or fruitless.

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).

*Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(2)* specifically provides, “an individual who leaves employment because of the health of the individual or another for whom the individual must care...shall submit a written statement or other documentary evidence of that health problem from a hospital or physician.” If a claimant fails to provide medical evidence of alleged medical problems, neither good cause nor valid circumstances are supported. See *Davis v. Maryland Homes for the Handicapped*, 25-BR-84. Where a claimant has a chronic ailment, and where conditions in the workplace are such that healthy persons are usually not affected, the claimant’s medical problem is not considered connected with the work. *Ortiz v. Trappe Packing Corporation*, 924-BR-92.

In her appeal, the claimant offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner’s decision. The claimant does not cite to the evidence of record and makes no other contentions of error.

In the instant case, the Board concurs with the hearing examiner’s *Evaluation of Evidence*. However, the Board finds that the claimant’s medical condition was compelling and that her reasons for quitting were so necessitous that only the minimum five-week penalty is warranted. Because there is insufficient medical evidence that the claimant’s job caused the claimant’s maladies, a finding of good cause cannot be supported. The claimant did present sufficient medical documentary evidence to meet her evidentiary pursuant to *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(2)*. The Board finds the claimant quit for personal reasons; and that the personal reasons were necessitous and compelling.

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.

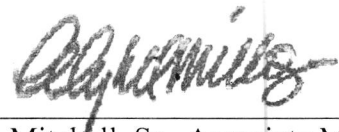
The Board finds, based upon a preponderance of the credible evidence, that the claimant did not meet her burden of proof and show that she quit this employment with good cause within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The claimant did meet her burden of proof and show that she quit this employment with valid circumstances within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*.

The Board finds only the five-week penalty is measured and appropriate on the facts of this case. The hearing examiner's decision shall be modified for the reasons stated herein.

### DECISION

The Board holds that the claimant voluntarily quit this employment with valid circumstances within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*. The claimant is disqualified from the receipt of benefits for the week beginning June 1, 2014, and the following four weeks.

The Hearing Examiner's decision is Modified.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

GWENDOLYN N. COUNCIL

JANJER ENTERPRISES INC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

GWENDOLYN N COUNCIL

SSN #

**Claimant**

vs.

JANJER ENTERPRISES 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: 1421084

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

October 06, 2014

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , LISA WYATT

**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, Gwendolyn N Council, began working for this employer, Janjer Enterprises Inc., known as Popeye's Restaurant, on or about November 5, 2013.

At the time of separation, the claimant was working as a full-time assistant manager, earning \$31,000 annually. The claimant last worked for the employer on or about June 2, 2014, before quitting under the following circumstances:

The claimant resigned because her job was too physically demanding. Excessive standing and walking flared up a preexisting foot impairment. At the end of her employment, the claimant's feet were constantly swollen and painful. The claimant met with human resources for help. The employer had no other work. Due to the nature of her job, taking a leave of absence would have given her only temporary relief. So, the claimant 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.

Md. Code Ann., Labor & Emp. Article, Section 8-1001(c)(2) provides that an individual who leaves employment because of the health of the individual or another for whom the individual must care "shall submit a written statement or other documentary evidence of the health problem from a hospital or physician."

### 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 resigned from her position of record. Therefore, 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 been met.

The claimant verified her medical condition and its severity at the time of her quit. The claimant's treating physician advised in a written report that the pain from the claimant's feet impacted her ability to walk and stand for any length of time. (Claimant Exh 1).

Since the claimant's medical impairment is preexisting, her quit does not rise to good cause. However, her resignation was for a compelling and necessitous reason. She quit protecting her health. The employer had no other work and a leave of absence was only a temporary solution.

Based on credible evidence, the claimant's quit rises to a valid circumstance. Benefits are allowed after a brief penalty.

### DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, and Section 8-1001. The claimant is disqualified for the week beginning June 1, 2014, and for the nine (9) weeks immediately following. 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 modified.



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C E Edmonds, 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 October 21, 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: September 19, 2014  
CH/Specialist ID: USB22  
Seq No: 002  
Copies mailed on October 06, 2014 to:

GWENDOLYN N. COUNCIL  
JANJER ENTERPRISES INC  
LOCAL OFFICE #65