

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	292-BR-91
	Date:	March 14, 1991
Claimant: Virginia Morrison	Appeal No.:	9017110
	S. S. No.:	
Employer: Halper Eye Associates ATTN: Christie Jones, Office Manager	L O. No.:	12
	Appellant:	CLAIMANT
Issue:	Whether the claimant's unemployment was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the law.	

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON **April 13, 1991**

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case the Board of Appeals modifies the decision of the Hearing Examiner.

The Board disagrees with a crucial finding of fact made by the Hearing Examiner. The Hearing Examiner made a finding of fact that the claimant voluntarily withdrew her boy from child care. But there is no substantial evidence to support the finding that the claimant's action was voluntary. The claimant's testimony was that the day care provider terminated the arrangement. This testimony was not contradicted at the hearing.

The claimant's day care was involuntarily terminated. This fact alone may not amount to a "valid circumstance," as that term is used in Section 6(a) of the law. A personal reason can amount to a valid circumstance only if it is "necessitous or compelling" and if it leaves the employee "no reasonable alternative" than to leave the employment. The evidence taken on this issue was skimpy; but, based on the evidence taken, the Board concludes that these criteria were met. The claimant appears to have made all reasonable efforts to find alternate day care on short notice, and appears to have found it -- but too late to keep her job.

DECISION

The claimant left work voluntarily, without good cause connected with the work but with valid circumstances, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. She is disqualified from receiving benefits from the week beginning July 8, 1990 and the nine weeks immediately following.

The decision of the Hearing Examiner is modified.

Chairman



Associate Member

K:H
kmb
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CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - SALISBURY

1 The employer had asserted in an earlier letter that the claimant voluntarily withdrew from day care, but the employer did not repeat this allegation at the hearing.

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

— DECISION —

Claimant:	Virginia Morrison	Date:	Nailed: 1/21/91
		Appeal No.:	9017110
		S.S. No.:	
Employer:	Halper Eye Assoc.	L.O. No.:	12
		Appellant:	Claimant

Issue: Whether the unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Law.

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

2/5/91

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Cristie Jones,
Office Manager

FINDINGS OF FACT

The claimant began employment in mid-June 1990, and performed services in Optical Science. The claimant last worked on July 13, 1990, and was separated through resignation.

The record shows that the claimant had applied with and hired by

the employer of record, with the employer holding the job open for approximately one month while the claimant relocated from another area and settled herself in Salisbury, including obtaining child care services. The record shows that the claimant's child care consisted of a babysitter who was at that time not licensed. The sitter subsequently chose not to become licensed but the prime reason for the claimant's withdrawal of her child from the care of that sitter was that the child would not stay with the sitter. That is, the services of the sitter were not withdrawn from the claimant but rather the claimant withdrew her child from the sitter because of an incompatibility between the child and the child care provider. There is no allegation that the child care services were in any way lacking or inadequate.

CONCLUSIONS OF LAW

Article 95A, Section 6(a) provides that an individual is disqualified for benefits when his/her unemployment is due to leaving work voluntarily. This section of the Law has been interpreted by the Court of Appeals in the case of Allen v. CORE Target City Youth Program (275 Md. 69), and in that case the Court said: "As we see it, the phrase 'due to leaving work voluntarily' has a plain, definite and sensible meaning; it expresses a clear legislative intent that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment."

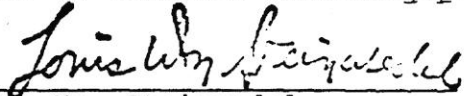
Child care services for a working claimant are primarily the responsibility of that claimant. In the instant case, the employer went the extra mile for the claimant by holding the job open for one month in order to allow the claimant to relocate to Salisbury and to settle herself there, including obtaining child care services. While the record shows that the claimant attempted unsuccessfully to obtain other child care services, the record is equally clear that the claimant could have continued with the child care provider until such time as another provider could be obtained and, thus, continued the employment. An analysis of the circumstances presented does not show that measure of good cause or valid circumstances as to support a resignation from employment. The circumstances do not demonstrate mitigating circumstances as determined by the Claims Examiner.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, within the meaning of Section 6(a) of the Maryland Unemployment Insurance Law. Benefits are

denied for the week beginning July 8, 1990 and until the claimant becomes re-employed, earns at least ten times her weekly benefit amount (\$1,670) and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is modified accordingly.


Louis Wm. Steinwedel
Deputy Hearing Examiner

Date of hearing: 1/4/91
rc/Cassette No: 8883
(12620)-Specialist ID:
Copies mailed on 1/21/91 to:

Claimant
Employer
Unemployment Insurance - Salibury - MABS