

- DECISION -

Claimant:
SERGEY BRINDAROV

Decision No.: 305-BR-12

Date: January 23, 2012

Appeal No.: 1130045

Employer:
HELMUT GUENSCHER INC

S.S. No.:

L.O. No.: 60

Appellant: Employer

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: February 22, 2012

REVIEW ON THE RECORD

After a review on the record, the Board adopts the hearing examiner's findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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 09.32.06.02(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 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 its appeal, the employer reiterates much of its testimony from the hearing. The employer contends that the modifications the claimant was requested to make to the door were well within the claimant's job description and consistent with the work he had been doing for the employer since the beginning of his employment. The Board has thoroughly reviewed the record in this matter and agrees with the employer's contention.

The claimant was hired as a highly skilled cabinet maker for the employer's specialty business. The claimant had, in fact, constructed the door which he was asked to modify. Asking a craftsman to make an alteration upon a piece he has created is certainly part of the craftsman's job. The request was not arbitrary, but necessary due to the overall construction project parameters. The claimant's refusal was unwarranted and unreasonable. Similarly, the claimant's statement that he wanted to be doing the work for which he had been hired, was illogical. The claimant was doing the work he had been hired to do; modifying the door, as requested, was the work he had been hired to do. The claimant's abrupt resignation over this request was not for a compelling or necessitous reason. The Board does not believe that the claimant has established valid circumstances or good cause for his decision to leave this employment.

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 did not meet his burden of demonstrating that he quit for good cause or valid circumstances within the meaning of § 8-1001. The decision shall be reversed for the reasons stated herein.

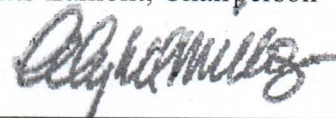
DECISION

It is held 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 August 7, 2011 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 reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

SERGEY BRINDAROV

HELMUT GUENSCHER INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SERGEY BRINDAROV

SSN #

Claimant

Vs.

HELMUT GUENSCHEL 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: 1130045
Appellant: Employer
Local Office : 60 / LARGO

September 23, 2011

For the Claimant: PRESENT

For the Employer: PRESENT, HELMUT GUENSCHEL, CYNTHIA SHAFFER

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

Sergey Brindarov (the Claimant) began working for Helmut Guenschel, Inc., (the Employer) on September 18, 2006. At the time of separation, the Claimant was working full time as a cabinet maker. He earned \$20.00 per hour for shop work, \$22.00 per hour for installation work that did not require an overnight stay, and \$23.00 per hour for installation work that did require an overnight stay. The Claimant last worked for the Employer on July 27, 2011, before quitting because he felt he was being asked to do work that substantially differed from the work he had been hired to do. The Claimant filed for unemployment benefits and established a benefit year beginning July 24, 2011, and a weekly benefit amount of \$430.00.

On July 27, 2011, the shop foreman for the Employer asked the Claimant to modify a door the Claimant had previously built as part of a project for the daughter of the President, Helmut Guenschel. The Claimant objected, saying that he wanted instead to do the work he had been hired to do. He refused to modify the

door. The shop foreman directed him to either modify the door or go home. The Claimant clocked out at 8:33 a.m., but remained on the premises in order to speak to Mr. Guenschel when he arrived. When Mr. Guenschel arrived, the Claimant asked to meet with him and Mr. Guenschel agreed. Mr. Guenschel again asked the Claimant to do as the foreman had directed and modify the door, but the Claimant again refused. The Claimant expressed frustration at the work he had been doing recently and asked for different work. When Mr. Guenschel was unable to offer different work, as none was available, the Claimant submitted his resignation with two weeks' notice. Mr. Guenschel responded by terminating the Claimant's employment immediately.

The Claimant is skilled in designing, building, and installing high-end furniture and in fine arts conservation and restoration. The Employer's primary business is in building museum display cases. The Employer's logo is: "Helmut Guenschel: The Fine Art of Exhibition."

CONCLUSIONS OF LAW

Section 8-1001 of the Labor & Employment Article of the Maryland Annotated Code 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 (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.

Section 8-1001 of the Labor & Employment Article of the Maryland Annotated Code 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.

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. The discharge was primarily an acceleration of the resignation date. Therefore, the claimant will be considered to have 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.

EVALUATION OF EVIDENCE

I considered all of the evidence in reaching this decision, including the testimony of the Claimant on his own behalf and of Mr. Guenschel and Ms. Cynthia Shaffer, Vice President, on the Employer's behalf. Where the evidence was in conflict, I decided the facts on the credible evidence.

This case presented as a termination. Ms. Shaffer testified that the Claimant was discharged by Mr. Guenschel for insubordination when he refused Mr. Guenschel's polite request for the Claimant to modify

the door. The Claimant acknowledged that he had refused to work on the door, despite a directive from the shop foreman and a request from Mr. Guenschel that he do so. However, the Claimant credibly testified that after his refusal, he submitted his resignation letter to Mr. Guenschel during a face-to-face meeting with him. Only after he submitted his resignation letter was he told to get his tools and leave the premises. He was not told that he was being discharged for insubordination.

I find that the Claimant voluntarily quit his employment. While the Employer chose to accelerate the separation date by making the Claimant's resignation effective immediately, I am not persuaded that the Employer did so based on insubordination by the Claimant. Rather, the Employer was responding punitively to the Claimant's resignation. In addition, as Mr. Guenschel testified, if the Claimant was unwilling to do the available work, there was no reason to have him standing around for two weeks with nothing to do. However, these reasons do not amount to a termination, much less a termination for misconduct.

Accordingly, the Claimant had the burden to show, by a preponderance of the evidence, that he 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 been met, and I find that the Claimant quit his position for valid circumstances.

The Claimant argued that modifying the door was not the kind of work he had been hired to do. The Employer's primary work, asserted the Claimant, is in building museum display cases which often involves woodwork, metal work, glass, and lighting. The door, on the other hand, was part of an extended project for Mr. Guenschel's daughter's basement.

The Employer responded by noting that the Claimant had been hired as a cabinet maker and that the Employer does a wide range of work, from building and installing furniture to building museum display cases. Ms. Shaffer testified that Mr. Guenschel's daughter was a client for whom the Employer was doing work. The Employer provided a copy of the Claimant's employment application for his position, in which the Claimant wrote that he was applying for a position as a cabinet maker. However, the application and attached resume also highlight the Claimant's employment background: he has extensive experience in building high-end furniture and fine arts conservation and restoration.

Based on the Claimant's background, coupled with the public face of the Employer (whose Employee Handbook, which is Emp. Ex. 2, includes its logo – Helmut Guenschel: The Fine Art of Exhibition), I agree that working on a door for Mr. Guenschel's daughter is outside the parameters of the job the Claimant reasonably believed he was hired to do. It is not so far afield that it can sustain a finding of good cause for the Claimant's resignation, but it is enough to support a finding of valid circumstances for the Claimant's decision to voluntarily quit. Accordingly, I find that being asked to do work outside of what he was hired to do is a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit.

It is thus determined that the Claimant has shown that the reason for quitting rises to the level necessary to demonstrate valid circumstances within the meaning of the sections of law cited above. However, since the Claimant was not allowed to work out his notice period, the weekly penalty will not begin until the week beginning August 7, 2011. See Nazarini, *supra*.

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 Section 8-1001 of the Labor & Employment Article of the Maryland Annotated Code. The Claimant is disqualified for the week beginning August 7, 2011 and for the six 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 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 reversed.

J. Gresock

J. Gresock

Administrative Law Judge

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

Any party 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 11, 2011. 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 14, 2011
AEH/Specialist ID: UTW7D
Seq No: 001
Copies mailed on September 23, 2011 to:

SERGEY BRINDAROV
HELMUT GUENSCHER INC
LOCAL OFFICE #60