

**- DECISION -**

Claimant:  
OLIVER T ASAAH

Decision No.: 3116-BR-14

Date: December 03, 2014

Appeal No.: 1412753

S.S. No.:

Employer:  
TEAM WASHINGTON INC  
STE 100

L.O. No.: 61

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: January 02, 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 July 24, 2014. That Decision held that the claimant had voluntarily quit his employment, without good cause or valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were not allowed for the week beginning March 30, 2014, and until the claimant has become reemployed, earned at least fifteen (15) times his weekly benefit amount, and become separated from that employment under non-disqualifying conditions.

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. The Board adopts the hearing examiner's findings of fact. However the Board concludes that these facts warrant a different conclusion of law and reverses the hearing examiner's decision.

*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).

In his appeal, the claimant reiterates much of his testimony from the Lower Appeals Division hearing.

The claimant was working part-time as a pizza delivery person. In order to perform the duties of this job, the claimant had to use his own automobile. Once that automobile became inoperable, the claimant could no longer perform the duties of the job. Lacking sufficient funds to repair the automobile, the claimant had no reasonable alternative but to quit.

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 his burden of proof and show that he quit this employment with good cause within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The claimant did meet his burden of proof and show that he quit this employment with valid circumstances within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The decision shall be reversed for the reasons stated herein.

## DECISION


The Board holds that the claimant voluntarily quit this employment without good cause but 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 from the week beginning March 30, 2014, and for the following 4 weeks.

The Hearing Examiner's decision is reversed.

**The employer, provided that the employer has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Empl. Art., §8-616, et seq.*, should note that any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. See *Md. Code Ann., Lab. & Empl. Art., § 8-611(e)(1)*.**



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

OLIVER T. ASAAH

TEAM WASHINGTON INC

TEAM WASHINGTON INC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

OLIVER T ASAAH

SSN #

**Claimant**

vs.

TEAM WASHINGTON INC  
STE 100

**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: 1412753

Appellant: Claimant

Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

July 24, 2014

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, MATTHEW SCHULTZ

**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, Oliver Asaah, worked for Team Washington from September of 2013, through March 30, 2014. The claimant earned \$4.00 per hour when doing deliveries, 7.25 per hour while working in the store. The claimant worked part time as a driver.

The claimant used his own vehicle for delivering pizzas for the employer. It was a requirement for the job. His car broke down leaving him unable to work. The claimant did not have the funds to repair the car. The employer agreed to keep his job open for him. The claimant never contacted the employer to return.

## CONCLUSIONS OF LAW

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

In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence presented at the hearing that the quit was for either good cause or valid circumstances, as those terms are defined above. Hargrove v. City of Baltimore, 2033-BH-83.

The claimant was responsible for maintaining his own car for work. He failed to do so. He then chose not to return to work. The claimant's failure to get his car repaired is not found to be attributed to the terms and conditions of employment. Therefore, neither good cause nor the first definition of valid circumstances applies. Additionally, the claimant has failed to demonstrate that all reasonable alternatives were exhausted prior to quitting. In particular, the claimant failed to show that there was no choice but to quit.

## 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 March 30, 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 Examiner is affirmed.



M. Franceschini, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 August 08, 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: July 14, 2014  
DAH/Specialist ID: WCP2M  
Seq No: 003  
Copies mailed on July 24, 2014 to:

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TEAM WASHINGTON INC  
LOCAL OFFICE #61

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