

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor
JOHN P. O'CONNOR, Acting Secretary

Board of Appeals
Hazel A. Warnick, Chairperson

- DECISION -

Claimant:
PATRICIA A. CHAMBERS

Decision No.: 03657-BR-98
Date: November 20, 1998

Employer:
YU, HENRY H

Appeal No.: 9813493

S.S. No.:

L.O. No.: 07

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.

- 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: December 20, 1998

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner and concludes that the claimant's reason for quitting, while not good cause, does amount to a substantial cause, connected with the conditions of employment, warranting a mitigated penalty, within the meaning of Labor and Employment Article, Section 8-1001.

The claimant worked only one to three hours per week for the Employer. In fact, she worked full time for an associate of Dr. Yu's at the same location. When she lost the full time job, through no fault of her own, she concluded that it was not worth the cost of travel to work for Dr. Yu for such a small amount of hours.



The Hearing Examiner correctly concluded that the precedent decision of Taylor v. Steve's Supermarket, 737-BR-87 is not controlling here, as the facts are substantially different. However, the Board does find that given the small amount of hours of work that the claimant performed for Dr. Yu, and the increased lack of cost effectiveness to work for him, due to the loss of the full time job in the same office, the claimant's decision to quit and look for full time work was not unreasonable and amounts to a substantial cause for quitting.


In the precedent decision Garogalo v. Ruby Tuesday, 576-BR-90, the Board held that a claimant who quit a low paying job in a different field that he had taken as a temporary measure, while he sought full-time work in his regular field, quit for good cause when the job interfered with his job seeking activities.

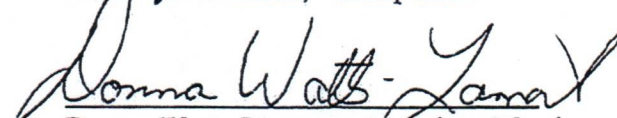
In this case, there is no evidence that the job interfered with the claimant's job seeking activities. Therefore, a finding of good cause is not supported. However, given the facts found above, the Board finds that there are valid circumstances, warranting the minimum disqualification.

DECISION

IT IS HELD THAT the claimant left work voluntarily, without good cause but for valid circumstances, within the meaning of §8-1001 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning June 21, 1998 and the four weeks immediately following.

The decision of the Hearing Examiner is modified.


Hazel A. Warnick, Chairperson


Donna Watts-Lamont, Associate Member

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 410-767-2600. 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. If any party wishes to appeal this decision, that party must follow the procedures outlined in the Notice of Right of Appeal to Court.

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Copies mailed to:
PATRICIA A. CHAMBERS
YU, HENRY H
Local Office - #07

UNEMPLOYMENT INSURANCE APPEALS DECISION

PATRICIA A. CHAMBERS

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Appeals Division

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

SSN :

Claimant

vs.

YU, HENRY H

Appeal Number: 9813493

Appellant: Employer

Local Office: 07 / College Park

Employer/Agency

August 26, 1998

For the Claimant: PRESENT, GLORIA LONGORIA

For the Employer: PRESENT, HENRY H. YU

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 was employed part time as a secretary/receptionist from January 8, 1990 to June 22, 1998 at which point she did not return to work. She worked from one to three hours on Mondays. The employer shared space with another physician, Dr. Longoria. Claimant worked full time for Dr. Longoria. Dr. Longoria made the business decision to release the claimant (and another) and to replace them with his wife, Gloria Longoria. Claimant needed full-time work and asked Dr. Yu, the employer in this case, to inquire of other physicians as to their need for a full-time secretary. Because her position with Dr. Longoria had come to an end, claimant chose not to report back to Dr. Yu to work for one to three hours on a Monday.

The parties agreed that there is no issue in this case as to misconduct and, indeed, there were no facts to substantiate any such claim.

The claimant did not inquire of Dr. Yu as to whether he wanted her to continue with the part-time employment with him. In point of fact, Dr. Yu expected her to continue working for him.

The claimant filed for unemployment against Dr. Longoria and is presently collecting unemployment because of her cessation of employment with him. Claimant admitted that she did not intend to file any claim against Dr. Yu for unemployment compensation benefits and her claim against him was only filed at the assistance or recommendation of the Claims Office at DLLR.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996) 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 "(1) 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

There was no testimony to substantiate any finding of misconduct. To the contrary, all parties admitted that this is not a case of misconduct at all. What happened in this case is that the claimant chose not to return to Dr. Yu since working for him for a very brief period of one day per week either did not justify her travel expenses and travel time or it would impede her job search for full-time employment. The testimony was that Dr. Yu expected her to continue on with him. She was his employee. He never indicated to her not to return.

It is to be remembered that the claimant began with Dr. Yu on a part-time basis. There was never any promise or expectation that she would obtain full-time employment with Dr. Yu. The reason why she left was not because of any action or inaction of Dr. Yu; rather, it was because Dr. Longoria made a business decision to release her. At the time that the claimant left her part-time employment, she had no full-time job to go to. Therefore, Taylor v. Steve's Supermarket, Inc., 737-BR-87 is not controlling.

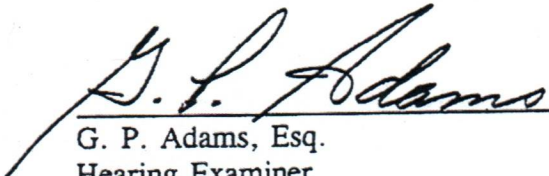
Once it has been established that a claimant voluntarily quit the job, the claimant has the burden of proving that good cause or valid circumstances exist. To show good cause, the claimant must prove that the cause for quitting was directly connected with the conditions of employment or actions of the employer. There was no such showing in this case. To show valid circumstances, the claimant must prove either that the cause for quitting was a substantial cause directly connected with the conditions of employment or actions of employer or, if the cause for quitting was personal, the claimant must show that the reason was necessitous or compelling and that the claimant had no reasonable

alternative other than to quit the job. In this case, neither prong has been met by a preponderance of the evidence.

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 (Supp. 1996). Benefits are denied for the week beginning June 21, 1998 and until the claimant becomes re-employed 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 Claim Specialist is reversed.


G. P. Adams, Esq.
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by September 10, 1998.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: August 19, 1998
DA/Specialist ID: EWCP5
Seq. No.: 002
Copies mailed on August 26, 1998 to:

PATRICIA A. CHAMBERS
YU, HENRY H
LOCAL OFFICE #07