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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

ROBERT L. EHRLICH, JR., Governor
MICHAEL S. STEELE, Lt. Governor

Board of Appeals
Hazel A. Warnick, Chairperson

-DECISION-

Claimant:
ANDREA K GAGNE

Decision No.: 374-BH-03

Date: February 06, 2003

Appeal No.: 0223840

Employer:
POTOMAC TALKING BOOK SERVICES
INC

S.S. No.:

L.O. No.: 64

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: March 08, 2003

- APPEARANCES -

FOR THE CLAIMANT:
Present

AGENCY
Ron D'Aguilla

FOR THE EMPLOYER:
Bob Norton, Controller



EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed as a full-time monitor from September 30, 2001 through June 14, 2002. She is unemployed as the result of a voluntary quit.

The claimant made \$9.00 per hour with this employer. She had health insurance benefits to which she had to pay \$148.66 per month with a \$150 deductible. After six months of employment, the claimant received 5 vacation and 5 sick days.

The claimant voluntarily quit her job with the employer in the instant case to accept a job with M & A Sales. This position paid \$10.50 per hour, and included paid health insurance benefits. After 3 months of employment, the claimant would have been eligible for a 50 cent per hour increase in pay and 5 vacation and 5 sick days. This job was approximately 10 minutes closer to the claimant's home. The reasons for the claimant's voluntary quit were purely economic.

The claimant, after 2 months with M & A Sales, was laid off due to an expected work contract not being awarded.

CONCLUSIONS OF LAW

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 serious, 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.

Voluntarily quitting one's job to accept better employment cannot constitute good cause within the meaning of Section 8-1001 as a matter of law. *Total Audio-Visual v. DLLR*, 360 Md. 387, 395, 758 A.2d 124, 128 (2000)("[a] plain reading of Section 8-1001 makes clear that leaving employment for a better paying job does not constitute 'good cause'."). It may however, constitute "valid circumstances" if it can be shown that the reasons for quitting meet the "necessitous or compelling" test of Section 8-1001(c)(ii)¹.

¹ Section 8-1001(c)(i) is inapplicable as a matter of law in cases such as the one at bar. The Court of Appeals found, "[n]ot being directly related to, attributable to or connected with the employee's employment or the actions of that employing unit, offers of higher pay as an inducement to leave existing employment must fall, if at all into [Section 8-1001(c)(ii)]."

This is a “stricter test” than the good cause test. *Plein v. DLLR*, 369 Md. 421 (2002). Under this stricter test, the Court of Appeals requires that more needs to be shown than that the precipitating event or cause “‘would reasonably [have] impel[led] the average able-bodied qualified worker to give up his or her employment’.” *Total Audio-Visual, supra, quoting Board of Educ. Of Montgomery County v. Paynter*, 303 Md. 22, 29, 491 A.2d. 1186, 1189-90 (1985).

The Board’s current interpretation of *Total Audio-Visual* read in conjunction with the *Plein* decision finds that voluntarily quitting one’s job for purely economic reasons is neither “necessitous” nor “compelling” under Section 8-1001. To the extent that this interpretation is inconsistent, the Board overrules its prior precedent decision in *Gaskins v. UPS*, 1686-BR-00.

There must be a showing of something more connected with the conditions of the prior employment which motivated the claimant to quit his or her job to accept better employment to constitute a valid circumstance within the meaning of Section 8-1001. The Court of Appeals has stated, “Accepting more money and changing jobs is as much of a gamble as thus, as much of a personal matter as going in to business for oneself. In [the Court of Appeals’] view, it is unmistakably clear that Section 8-1001(a) was not designed to provide benefits when the precipitating cause for the voluntary leaving of employment was for higher pay or a better job. Instead, it was designed to prevent hardship to persons who lose their job through no fault of their own.” *Plein v. DLLR*, 369 Md. 421 (2002), *quoting Total Audio-Visual*,² 360 Md. 387, 400-01, 758 A.2d 124, 131-32 (2000). The Court explained in *Plein*, “In *Total Audio-Visual*, this Court, albeit, and perhaps significantly so, a sharply divided one, determined, and held, that the General Assembly did not intend that a person who voluntarily terminates his or her otherwise satisfactory employment for other employment with better pay be eligible to receive unemployment benefits when laid off through no fault of his or her own by the subsequent employer.”

The Board, therefore, affirms the decision of the hearing examiner, but based on the above conclusions of law.

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. She is disqualified from receiving benefits from the week beginning June 9, 2002

² In *Plein, supra*, the claimant was employed by Atlas Tile & Terrazo as a tile setter’s helper at a job paying \$9.00 per hour. He accepted employment with Home Depot, U.S.A. as a sales associate in the floor and wall department. The Home Depot job paid \$12.00 per hour with the prospect of receiving, after a waiting period, a health insurance plan and stock purchase options and, after one year, two weeks vacation and sick leave. The claimant left his employment with Atlas and began working at Home Depot on August 14, 2000. On September 27, 2000, the claimant was laid off through no fault of his own. The Court of Appeals found that the claimant was not entitled to unemployment benefits under the “necessitous or compelling” test of Section 8-1001 under its interpretation and under the authority of *Total Audio-Visual, supra*.

and until the claimant becomes re-employed, earns at least fifteen times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is affirmed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member



Hazel A. Warnick, Chairperson

Date of hearing: February 04, 2003

Copies mailed to:

ANDREA K. GAGNE

POTOMAC TALKING BOOK SERVICES

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

CORRECTED DECISION

ANDREA K GAGNA

SSN #

Claimant

vs.

POTOMAC TALKING BOOK SERVICES
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: 0223840

Appellant: Claimant

Local Office : 64 / BALTOMETRO
CALL CENTER

October 22, 2002

For the Claimant : PRESENT

For the Employer : PRESENT . BOB NORTON

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 between September 30, 2001 and June 14, 2002. She worked full time as a monitor, making \$9.00 an hour. The claimant resigned her position with the employer in order to accept another job. The new job offered her a 15% increase in salary and free health insurance. The claimant hoped that by accepting the new job, she would be able to afford to move out of her parents' home.

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."

In Total Audio-Visual Systems, Inc. v. DLLR, 360 Md. 387 (2000), the Court held that an individual who has left his or her employment to accept other employment has not left his or her job for good cause as defined in Section 8-1001(b)(1) of the Labor & Employment Article of the Annotated Code of Maryland. However, a finding of valid circumstances is appropriate if the claimant can show that accepting the alternative employment was "of such a necessitous and compelling nature that the individual had no reasonable alternative other than leaving the employment." Gaskins v. UPS, 1686-BR-00.

EVALUATION OF EVIDENCE

In order to establish that the claimant quit her position for valid circumstances, the evidence must demonstrate that the claimant had no reasonable alternative other than leaving her employment. Regrettably, while the claimant was attempting to advance her career and improve her economic situation, the reasons for accepting the new position were not "necessitous and compelling." Further, the claimant had reasonable alternatives other than leaving the employment. Specifically, she could have continued to remain with the original employer, all the while living at home.

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 June 9, 2002 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 Specialist is reversed.



W. Rosselli
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 410-949-0022 or 1-800-827-4839. 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.

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 November 06, 2002. 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

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

Date of hearing : October 08,2002
GH/Specialist ID: RBA28
Seq No: 001
Copies mailed on October 22, 2002 to:
ANDREA K. GAGNA
POTOMAC TALKING BOOK SERVICES
LOCAL OFFICE #64