

- DECISION -

Claimant:
KATHLEEN V BLACKWELL

Decision No.: 420-BR-11

Date: January 26, 2011

Appeal No.: 1035955

Employer:
MD EDUCATION SERVICES LLC

S.S. No.:

L.O. No.: 63

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: February 25, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact and reverses the hearing examiner's decision.

The claimant was hired to be responsible for assuring that students were prepared to take and pass the State "Boards" for licensing as cosmetologists. The claimant conducted review classes, taught classes and assisted instructors in preparing materials all designed to teach students everything necessary for their licenses. The claimant's primary duty was teaching practice Boards, wherein she would give students sample questions or practical exercises similar to those they would find on their tests. In conjunction with this, the claimant received several complaints from students that they were missing some critical instruction and feared this would impede their passing the Boards.

The claimant raised this issue with her supervisor. The supervisor told the claimant this was not her concern. They disagreed and took the issue higher in the management structure. One person agreed with the claimant, and said he would look further into the matter. Shortly thereafter, the claimant's supervisor told the claimant that she was not to take these concerns to management again. The claimant was instructed to do her job and not worry. The claimant's students continued to express their worries about this missing instruction.

At about the same time, the claimant's relationship with her supervisor worsened. They did not have good communication with each other. The claimant attempted to resign, but was asked by higher management to take some time off instead and see if things would just calm down. When the claimant attempted to take this time off, her supervisor advised her that she must have coverage for all her classes or she did not need to plan to return. This further upset the claimant and decided to simply resign. The employer released the claimant prior to the effective date of her resignation.

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(H)(1)*. 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.

The evidence established that the claimant attempted every resolution she knew of to perform her explicit job duties. Seeing that the students had all the required course work and practical experience was specifically what the claimant was hired to do. Her supervisor, however, continued to make it difficult, if not impossible for the claimant to accomplish her tasks and prepare the students for the Boards. The claimant discussed her concerns with management until she was told by her supervisor to have no further contact with higher management.

Here, the claimant was making a sincere effort to perform the duties for which she had been hired. She had legitimate concerns that her students had not had all the classroom instruction they would need to be successful and pass their licensing exams. The claimant was simply trying to make sure that not only did she do her job, but also that her students were properly prepared. Clearly, this was connected to the work. And, because the claimant had no viable options remaining to her when she quit, she did so with good cause.

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 has met her burden of demonstrating that she quit for good cause or valid circumstances within the meaning of § 8-1001. The decision shall be reversed.

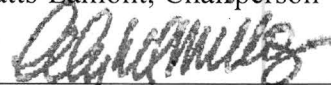
DECISION

It is held that the claimant voluntarily quit, but for good cause connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8 Section 1001. No disqualification is imposed based upon the claimant's separation from employment with MD EDUCATION SERVICES, LLC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

KATHLEEN V. BLACKWELL

MD EDUCATION SERVICES LLC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

KATHLEEN V BLACKWELL

SSN #

Claimant

vs.

MD EDUCATION SERVICES LLC

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: 1035955
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

November 03, 2010

For the Claimant: PRESENT

For the Employer:

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 worked for this employer December 7, 2007, through August 12, 2010. At the time the claimant was terminated, the claimant was working as a float instructor between two school locations who worked with students who were preparing for their board exam.

The claimant resigned because of the way her supervisor, Ms. JoAnn Parker, treated her. The students at the Winchester school location complained to the claimant that they would not receive an important course before their board exam. The claimant passed this information along to Ms. Parker who told her that this matter was none of her concern. She then wrote an email to Ms. Parker, Abbas Al-hadithi, Vice President, and the two owners of the company, Michael Al-harmoosh and Ziad Fadel. The claimant told them in her letter of her concerns about the students potentially not receiving an important class before the board exam.

Once again, Ms. Parker told her that this matter was none of her concern. When the opportunity arose, she spoke to Abbas Al-hadithi and told him that Ms. Parker had forbidden her to speak with him. He told her that he would try to take care of the situation.

The claimant continued to speak to Mr. Al-hadithi about this class and her relationship with Ms. Parker. The atmosphere between the claimant and Ms. Parker continued to be extremely tense.

On August 10, 2010, the claimant emailed a letter of resignation to her employer. She worked August 11 and 12, 2010. On August 12, 2010, Ms. Parker emailed her, accepted her resignation and told her that she did not have to return to work after August 12, 2010.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 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, 338 A.2d 237 (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.

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.

The claimant quit because she received a reprimand. The claimant failed to prove that the reprimand was unreasonable or that it was given in a degrading, insulting or harassing manner. The claimant voluntarily quit without good cause or valid circumstances. Daughton v. Oxford Realty Services Corporation, 414-BR-91.

Where the claimant gave two weeks' notice and the employer accelerated the claimant's leaving to be effective immediately, the penalty under Section 8-1001 of the law does not commence until two weeks after his separation from employment. Stefan v. Levenson and Klein, 1794-BR-82.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

The claimant had the burden to show, by a preponderance of the evidence, that the claimant voluntarily quit 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 not been met.

When a claimant quits her job for a work related reason, it must be determined whether the quit was for good cause or due to a substantial cause amounting to a valid circumstance. The claimant quit her employment because of conflicts with her supervisor brought forth by the claimant's own actions. Ms. Parker told her that she was not to pursue an issue that was outside of the claimant's job responsibilities. However, she continued to pursue the issue with management. Furthermore, she has failed to demonstrate that her supervisor's actions were unreasonable or given in a degrading, insulting or harassing manner. Therefore, the claimant has not demonstrated that her reasons for quitting this employment was either for good cause or due to a substantial cause amounting to a valid circumstance. See Daughton v. Oxford Realty Services Corporation, 414-BR-91.

The claimant gave notice that her last day at work would be August 25, 2010. The employer shortened her remaining work time so that her last day at work was August 12, 2010. Pursuant to Stefan v. Levenson and Klein, 1794-BR-82, the penalty under Section 8-1001 of the law does not commence until two weeks after her separation from employment.

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 August 22, 2010, 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 modified.

N Grimes

N Grimes, 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 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 18, 2010. 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: October 21, 2010
BLP/Specialist ID: WCU1J
Seq No: 001
Copies mailed on November 03, 2010 to:

KATHLEEN V. BLACKWELL
MD EDUCATION SERVICES LLC
LOCAL OFFICE #63