

- DECISION -

Claimant:
ARREVIA R WHITLOW

Decision No.: 4449-BR-12

Date: December 12, 2012

Appeal No.: 1218478

S.S. No.:

Employer:
HEALTHCARE RESOLUTION SERV INC

L.O. No.: 65

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: January 11, 2013

REVIEW OF THE RECORD

After a review of 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 09.32.06.03(E)(1)*.

“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 contends the hearing examiner: "...found 'the employer's disciplinary action was taken in bad faith'". The employer has misread the hearing examiner's decision. That statement is contained in a discussion of the Board's findings from a precedent case cited by the hearing examiner in support of his conclusions (*Woener v. White Marsh Mall, Inc.*, 2159-BR-92). In point of fact, there was no disciplinary action taken in the case at bar.

The employer also contends the hearing examiner erred in finding, "...the President had an obligation to take charge of the last meeting or have a neutral person chair it." The employer expresses disagreement with this and reiterated the employer's position that the President did chair the meeting, but allowed both parties to the meeting to "...voice their concerns in a safe and neutral setting." The employer lastly contends the employer, "...did not act in bad faith. In fact, they created a forum for [the claimant] to be heard."

The evidence, contrary to the employer's contention, showed that while the President ostensibly chaired this meeting, the Acting Human Resources Director led it. The President allowed the Director to take charge of the tone and content of the meeting. That he was not officially the chair of the meeting is immaterial when he acted as though he was. That was the claimant's perception and the Board does not disagree. The claimant was subjected to harassment prior to the meeting, and during the meeting when the Director demanded she reveal who had told her of his comments. Further, the Board questions the efficacy of a meeting such as this where there was a clear and unambiguous imbalance of power, and the focus seemed more on identifying who was telling the claimant what the Director had said instead of on the inappropriateness of the Director's words and actions.

The employer may not have intended to act in bad faith. However, the conduct of the Acting Human Resources Director is attributable to the employer and his conduct was in bad faith. Someone in a professional Human Resources position should certainly know that to make rude and inappropriate comments about one employee to another employee, within the workplace, is prohibited. Someone in a professional position of authority over an Acting Human Resources Director should have known that it was incumbent upon them to take more proactive and preventative steps than to call a meeting between the claimant and the director.

The Board does not understand, from his decision, why the hearing examiner did not find the claimant had good cause for leaving this employment. The Board is of the opinion that the claimant meets the necessary criteria and corrects the error by its reversal of this decision. The claimant's reason for leaving was connected to and arose from her employment. The claimant took the steps available to her to address her grievance and resolve the problem. The employer did not, in response, give the claimant any reason to believe that the situation had been properly handled. The claimant was, in the Board's opinion, compelled to leave this employment as a result of the circumstances.

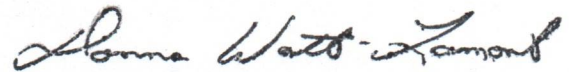
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant met her burden of demonstrating that she quit this employment for good cause within the meaning of §8-1001 for quitting this employment. The decision shall be reversed for the reasons stated herein.

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 HEALTHCARE RESOLUTION SERVICE, INC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

ARREVIA R. WHITLOW
HEALTHCARE RESOLUTION SERV INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ARREVIA R WHITLOW

SSN #

Claimant

vs.

HEALTHCARE RESOLUTION SERV 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: 1218478

Appellant: Claimant

Local Office : 65 / SALISBURY
CLAIM CENTER

June 19, 2012

For the Claimant: PRESENT

For the Employer: PRESENT , NICK LASSALLLE

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, Arrevia Whitlow, worked for this employer, Healthcare Resolution Serv Inc., from January 2, 2012 until April 9, 2012. At the time of her voluntary quit, the claimant worked as a full-time night auditor, earning \$72,000 annually. The claimant voluntarily quit her position with this employer due to harassment by Comptroller/Human Resources Director (Santany).

The Comptroller, Human Resources Director told a third employee to stay away from the claimant and another night auditor because they were "mother fuckers" and "bad news". The statement was disclosed to the claimant. She was offended and reported her concerns to the President of the Company. A meeting was held. The claimant, her coworker and the Comptroller/ Human Resources Director were present. The

meeting was chaired by the Comptroller/ Human Resources Director. He wanted to know who advised the claimant of the statement. The claimant refused to mention any names. The meeting was not productive. The claimant was offended that the President did not have another official conducting the meeting. The claimant elected to resign because she was tired of the actions of the Comptroller/Human Resources Director. She elected to resign.

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 THE EVIDENCE

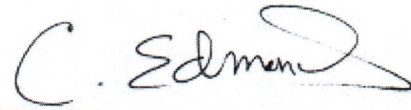
The claimant had the burden to show, by a preponderance of the credible evidence, she voluntarily quit her position with this employer for reasons which constitute either good cause or valid circumstances, pursuant to the Maryland Unemployment Insurance Law. (Hargrove v. City of Baltimore, 2033-BH-83). In the case at bar, the claimant met this burden.

Quitting a job because the employer is discriminating against an employee or subjecting him or her to harassment is generally for good cause. The Board of Appeals applied this principle in Woerner v. White Marsh Mall, Inc., 2159-BR-92, holding "The employer's disciplinary action was taken in bad faith. Just as an employee has a basic duty of loyalty toward her employer, an employer has a basic duty to treat an employee in good faith. Where this duty is violated in regard to disciplinary procedures, good cause is established." Similarly, in the case at bar, the Comptroller/ Human Resources used offensive language, there is insufficient evidence to establish that he acted in bad faith. Nonetheless, the President had an obligation to take charge of the last meeting or have a neutral person chair it. Based on the evidence presented, the claimant resigned for conditions of employment. Her separation constitutes a valid circumstance. Benefits are allowed after a brief penalty is imposed.

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 Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning April 8, 2012, and for the four (4) 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 modified.



C E Edmonds, 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 July 05, 2012. 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 : June 07,2012

CH/Specialist ID: USB18

Seq No: 001

Copies mailed on June 19, 2012 to:

ARREVIA R. WHITLOW

HEALTHCARE RESOLUTION SERV INC

LOCAL OFFICE #65