-DECISION-

Claimant:
TINA D BOLLINGER

Employer:
HIGHS OF BALTIMORE INC

Decision No.: 4584-BR-11

Date: August 16, 2011

Appeal No.: 1115256

S.S. No.:

L.O. No.: 65

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: September 15, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the hearing examiner's findings of fact but reaches a different conclusion of law.

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.

In *Smith v. Circuit City Stores, Inc., 1747-BR*-93,.in at the time of the claimant's hiring, he discussed with the employer the fact that he was unfamiliar with the type of fork lift used by the employer. Both parties agreed that the claimant would try to learn the job. The claimant received no training. After three weeks, the claimant found that he could not use that type of fork lift, despite making good faith efforts to learn, and he quit. The claimant had good cause for quitting the job.

The only statement from the employer is contained in the Agency Fact Finding Report. *See Agency Exhibit 1.* Although the Agency Fact Finding Report is a public document, the statements contained therein are hearsay. While hearsay is admissible in an administrative proceeding, it is usually given less weight than credible, first-hand testimony. Although the hearing examiner may rely on hearsay evidence in making his determination, the hearing examiner must, "first carefully consider[] its reliability and probative value." *Travers v. Baltimore Police Dept., 115 Md. App. 395, 413 (1997); also see Kade v. Charles H. Hickey School, 80 Md. App. 721, 725 (1989)* ("[e]ven though hearsay is admissible, there are limits on its use. The hearsay must be competent and have probative force."). In the instant case, the hearing examiner did not rely on hearsay evidence as the basis of the decision and properly weighed the credible evidence in the record.

In the instant case, the claimant worked for the employer for two weeks. The first week was supposed to be spent training as an assistant manager of the employer's convenience store. The claimant spent the first week cleaning and organizing the store and did not receive the proper training.

During the claimant's second week, she spent three days working with other employees. On the fourth day, the claimant was to open the store herself and perform all the duties of an assistant manager. The claimant did not believe that she had received the proper training from her manager to perform the opening that day.

Prior to the day the claimant was to open the store, she contacted her regional manager to inform her of her discomfort in performing these duties. She told her regional manager that she did not receive the proper training. The regional manager did not do anything except suggest a transfer to another store. The claimant explained that it was not a personality conflict – it was that she had not received the appropriate training to perform the duties of assistant manager.

Because the claimant could not receive any satisfaction, or have her manager or regional manager understand that actual training was required, the claimant voluntarily quit her job.

The Board finds that based on the precedent of *Smith v. Circuit City Stores, Inc., 1747-BR*-93 the claimant had good cause to quit her employment.

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 HIGHS OF BALTIMORE, INC.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr., Associate Member

RD/mr
Copies mailed to:
TINA D. BOLLINGER
HIGHS OF BALTIMORE INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TINA D BOLLINGER

SSN #

Claimant

vs.

HIGHS OF BALTIMORE 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: 1115256
Appellant: Claimant
Local Office : 65 / SALISBURY CLAIM CENTER

May 18, 2011

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 began working for this employer on or about March 7, 2011. At the time of separation, the claimant was working as an assistant manager/trainee. The claimant last worked for the employer on or about March 17, 2011, before quitting under the following circumstances: the claimant believed she was not receiving sufficient training.

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.

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, she voluntarily quit this position 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.

The claimant failed to present evidence the quit was because of the conditions of employment or because of personal reasons that were so compelling she had no other choice than to quit. The claimant had been employed for approximately two weeks of which one entire week was training. When she was given the assignment to open the store in the morning, she called the area supervisor and quit. The claimant failed to review all of her options before quitting this job after a short period of employment.

It is thus determined the claimant concurrently failed to demonstrate the reason for quitting rises to the level necessary to demonstrate good cause / valid circumstances within the meaning of the sections of law cited above.

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 13, 2011, 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 affirmed.

T N Evans

T N Evans, Jr, 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

Any party 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 June 02, 2011. 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: May 10, 2011
BLP/Specialist ID: USB57
Seq No: 003
Copies mailed on May 18, 2011 to:

TINA D. BOLLINGER
HIGHS OF BALTIMORE INC
LOCAL OFFICE #65