

**- DECISION -**

Claimant: L BRAD A STANDISH	Decision No.: 5008-BR-12
	Date: November 02, 2012
	Appeal No.: 0941276
Employer: AIRPARK SALES & SERVICE INC	S.S. No.:
	L.O. No.: 60
	Appellant: EMPLOYER - REMAND FROM COURT

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

---

**- 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 03, 2012

---

**PREAMBLE**

This matter was remanded from the Circuit Court for St. Mary's County after a Petition for Judicial Review was filed by the employer. The Remand Order states as follows:

ADJUDGED, ORDERED and DECREED that based upon the Record, there is insufficient evidence for the Board and Hearing Examiner to conclude that the Claimant was discharged; and it is further

ADJUDGED, ORDERED and DECREED that the Decision of the Department of Labor, Licensing and Regulation Board of Appeals is hereby REVERSED; and it is further

ADJUDGED, ORDERED and DECREED that the case be REMANDED to the Department of Labor, Licensing and regulation Board of Appeals to determine if the Claimant quit for good cause or valid circumstances.

The Board issues the following decision pursuant to the Circuit Court's Remand Order.

### REVIEW OF THE RECORD

After a review of the record, the Board makes the following findings of fact and conclusions of law. The hearing examiner's decision shall be reversed.

The claimant began working for the employer Airpark Sales and Service, Inc. (a.k.a as Airtec, Inc. in the Lower Appeals Division Exhibits and hereinafter referred to as "Airtec") on June 23, 2008. At the time of claimant's separation from employment, the claimant was working as a full-time pilot.

In August, 2008, the claimant requested that beginning September 16, 2008, he be put on the employer's part-time pilot roster through December, 2008. The claimant's request arose out of a need to care for his mother who was undergoing a rigorous cancer treatment. The claimant had been advised that the claimant's mother was going to need a full-time family caregiver while she was undergoing the treatment.

During this time period, the claimant was to have received training and certification identified as "check ride" to continue to operate the employer's airplanes. The claimant was unable to pass a portion of the check ride certification on August 19, 2008. The claimant did not have to drop out of this training or certification based upon his personal family matters.

On September 9, 2008, the claimant requested that he not continue his training and recheck at that time but to limit his pilot services to flying only those planes that do not require the specific certification.<sup>1</sup> (*See email from claimant to Mr. Lesko and Mr. Bidman dated September 9, 2008*). The employer was unable to provide the claimant with a part-time position and the claimant was separated from employment on September 11, 2008.

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)*.

---

<sup>1</sup> The conversations between the claimant and the employer were submitted by the employer after the Lower Appeals hearing. They were entered into the record at the Circuit Court proceedings. These are a part of the evidentiary record reviewed by the Board.

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)*.

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. 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 (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 (1985); also see *Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984)*. 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 (1985).

“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. 250(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.

When a claimant leaves employment due to either the health of the claimant or the health of another individual for whom the claimant must care, the statute imposes an evidentiary requirement on the claimant. The claimant must submit a written statement or other documentary evidence of the health problem from a physician or hospital. There is no statutory requirement that the written evidence contain a statement that the claimant was advised by a physician to quit the employment. However, 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. *Shifflett v. Department of Employment and Training, 75 Md. App. 282, 540 A.2d 1208 (1988)*.

The Board has long held that claimants voluntarily leaving employment to care of another individual is for valid circumstances. In *Williams v. National Applicators, 539-BR-89*, the claimant's wife was suffering from a serious illness. She was living in North Carolina with their two children, but the claimant resided in Washington, D.C. Because of his wife's illness, the claimant resigned from his employment and moved back to North Carolina to help take care of his wife and children. The claimant quit due to a circumstance relating to the health of his wife who had to be cared for by the claimant, and this is a cause of such a necessitous nature that he had no reasonable alternative other than to leave.

Furthermore in *Leonard v. Sinai Hospital of Baltimore, 129-BH-91*, the claimant took a leave of absence to care for her seriously ill father. When she realized she needed a longer leave of absence, she requested this from the employer, but her request was denied. No other family members were available to assist the claimant's father. The claimant subsequently resigned. The claimant produced medical documentation of her father's condition. The claimant voluntarily quit without good cause, but with valid circumstances.

In the instant case, the claimant's request to move to a part-time, per diem basis could not be accommodated by the employer. There is no dispute that the claimant was requesting this alteration of his full time position to care for his ill mother. As in *Williams* and *Leonard* recited above, the claimant had no alternative but to separate from his full-time employment to care for his sick mother. The Board finds the weight of the credible evidence supports a finding that the claimant's voluntarily quitting his full-time employment was for valid 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 did not meet his burden of demonstrating that he quit this employment for good cause. However, the claimant has met his burden and established that he had valid circumstances within the meaning of § 8-1001 for quitting this employment. The claimant shall be disqualified from receiving benefits for five (5) weeks beginning the week of September 7, 2008.

The hearing examiner's decision is reversed.

The employer, provided that the employer has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Empl. Art., §8-616, et seq.*, should note that any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. See *Md. Code Ann., Lab. & Empl. Art., §8-611(e)(1)*.


### DECISION

It is held that the claimant left work voluntarily, without good cause but for valid circumstances, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. The claimant is disqualified from receiving benefits from the week beginning September 7, 2008 and the five weeks immediately following.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

RD/mr

Copies mailed to:

L BRAD A. STANDISH  
AIRPARK SALES & SERVICE INC  
AIRPARK SALES & SERVICE INC  
JOHN B. NORRIS III ESQ.  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

L BRAD A STANDISH

SSN #

**Claimant**

vs.

AIRPARK SALES & SERVICE 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: 0941276

Appellant: Claimant

Local Office : 60 / TOWSON CALL  
CENTER

January 20, 2010

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , STEVEN BILGLMAN

**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 June 23, 2008. At the time of separation, the claimant was working full time as a pilot. The claimant last worked for the employer on or about September 9, 2009 before being terminated for being unable to satisfy the requirements of the job.

Claimant was hired to fly all of employer's planes including planes of a certain weight that required special certification by the Federal Aviation Authority (FAA). To be certified, a pilot must pass a test or check aide that includes verbal and practical components. Claimant made two (2) attempts to become certified but was unsuccessful. Claimant was terminated by employer for being unable to satisfy the requirements of his position.



## CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1003 provides for a disqualification from benefits where the claimant is discharged or suspended as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been defined as "...a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises." Rogers v. Radio Shack, 271 Md. 126, 132 (1974).

## 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 employer had the burden to show, by a preponderance of the credible evidence, that the claimant was discharged for some degree of misconduct connected with the work within the meaning of the Maryland Unemployment Insurance Law. Ivey v. Catterton Printing Company, 441-BH-89. In the case at bar, that burden has not been met.

Claimant did not engage in any misconduct. He failed to meet the requirements of the job which in this case did not constitute misconduct.

I hold that the claimant did not commit a transgression of some established rule or policy of the employer, a forbidden act, a dereliction of duty, or engage in a course of wrongful conduct within the scope of the claimant's employment relationship, during hours of employment, or on the employer's premises. No unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1003 pursuant to this separation from this employment.

## DECISION

IT IS FURTHER HELD THAT the claimant was discharged, but not for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1003. No disqualification is imposed based upon the claimant's separation from employment with the above-identified employer. The claimant is 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](mailto: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 reversed.

*B. Woodland-Hargrove*

---

B H Woodland-Hargrove, 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 February 04, 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: December 22, 2009

DW/Specialist ID: WCU17

Seq No: 001

Copies mailed on January 20, 2010 to:

L BRAD A. STANDISH

AIRPARK SALES & SERVICE INC

LOCAL OFFICE #60

AIRPARK SALES & SERVICE INC