

- DECISION -

Claimant:
MAURA J KRAFT

Decision No.: 5032-BR-12

Date: October 24, 2012

Appeal No.: 1215098

S.S. No.:

Employer:
NORINO MANAGEMENT INC

L.O. No.: 63

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: November 23, 2012

REVIEW OF THE RECORD

After a review of the record, and after deleting "or about" from the first and third sentences of the second paragraph, 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 the employer's appeal, its counsel offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner's decision. The employer's counsel does not cite to the evidence of record and makes no other contentions of error. Counsel merely requests an appeal. The Board notes that counsel refers to a "Remand Decision". The document to which counsel has appealed is a hearing examiner's decision, following remand by the Board because the recording had not been located at the time of the original appeal. As noted by the hearing examiner, the recording was located and the original decision was reissued to preserve the parties' rights of appeal.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. Both parties were present at the hearing; both parties were afforded their full due process rights. The Board finds no reason to order another hearing or to take additional evidence in this matter.

The Board has conducted a thorough review of the evidence. The Board finds the hearing examiner erred in his analysis and conclusion that the claimant had valid circumstances for her decision to quit this employment. A finding of valid circumstances generally requires a claimant to attempt to perform the duties of a position. The Board will not find valid circumstances where a claimant refuses to try to perform some task which is reasonable and, in all likelihood, attainable. Here, the claimant gave up, without making an attempt to try to use the program or otherwise learn how to use the program. The claimant did not have valid circumstances for leaving this employment on her third day of work.

The Board finds based on a preponderance of the credible evidence that the claimant did not meet her burden of demonstrating that she quit for good cause or valid circumstances within the meaning of §8-1001. The claimant is disqualified from the receipt of benefits for the week beginning June 12, 2011, and until the claimant has earned fifteen times her weekly benefit amount and become unemployed through no fault of her own. The decision shall be reversed for the reasons stated herein.

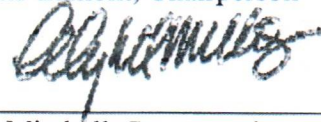
DECISION

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. The claimant is disqualified from receiving benefits from the week beginning June 12, 2011 and until the claimant becomes re-employed, earns at least fifteen times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

MAURA J. KRAFT

NORINO MANAGEMENT INC

ARNOLD M. ZERWITZ ESQ.

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS REMAND DECISION

MAURA J KRAFT

SSN #

Claimant

vs.

NORINO MANAGEMENT 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: 1215098
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

July 19, 2012

For the Claimant: PRESENT, CHRIS MCGUIRK

For the Employer: PRESENT, ARNOLD M. ZERWITZ, ESQ., JOANNE HASE

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).

PREAMBLE

This matter was remanded by the Board of Appeals because the Board of Appeals was unable to review the audio recording of the May 14, 2012 hearing. As the audio recording has now been located, the original decision is being reissued to preserve the parties' right of appeal. Any party aggrieved by this decision may appeal to the Board of Appeals by following the instructions on the last page of this decision.

FINDINGS OF FACT

The claimant, Maura Kraft, filed a claim for benefits establishing a benefit year beginning October 17, 2010. She qualified for a weekly benefit amount of \$369.00.

The claimant began working for this employer, Norino Management Inc., on or about June 13, 2011. At the time of separation, the claimant was working full-time as an Administrative Assistant. The claimant last worked for the employer on or about June 15, 2011, before voluntarily quitting when she was required to perform tasks for which she did not have experience.

The claimant was hired as an administrative assistant to work with the employer's construction side of the business. The employer considered the experience she listed on her resume when it decided to hire her. The employer also considered the fact that she previously worked for a construction company as important when it hired her. Among other tasks, the employer requires its administrative assistants to write up estimates, a task the claimant had never performed. Administrative assistants would not be required to actually estimate a job. However, the administrative assistant would be given all the information on a job and then required to input that information into the system and to generate the estimate for the employer. The claimant's resume is devoid of any experience working with estimates. The claimant was not informed that she would be required to work up estimates during her interview. Since the claimant had extensive experience working on computers and working with other computer programs such as Microsoft Word and Excel and Quickbooks, the employer determined the claimant should have been able to learn their estimator program for producing estimates. (Employer Ex. 1) The employer felt the claimant was "trainable."

For the first two days on the job, the claimant was given tutorials on the software it used, which included the employer's estimate generating program. The claimant was charged with learning the program. On day three, Jim Parks, Manager, spent two hours working with the claimant on the estimator program. After the two hours of training, Mr. Parks assigned the claimant the task to work up an estimate. The claimant had not completely grasped the program and raised that issue. She was informed that estimate creating was what she needed to be doing at that time as the employer had no other work for her at that present time. The claimant went to Joanne Hase, Bookkeeper and point of contact, and informed her of her situation and that she did not have experience with the program and that she did not expect to be writing up estimates. While the claimant might have been able to perform this task given enough time and proper training, the claimant did not feel she could perform the task for which she was being required to complete at that time. After some consideration, the claimant tendered her resignation and voluntarily quit.

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.

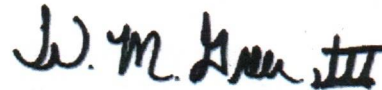
(Agency Ex. 1)

I hold the claimant's voluntary quit was without good cause, but for valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1001 pursuant to this separation from this employment. Benefits will be allowed after the claimant serves a weekly penalty.

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 June 12, 2011, and for the six 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 Claim Specialist is modified.



W E Greer, 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 August 03, 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: May 14, 2012
CEH/Specialist ID: WCU61
Seq No: 003
Copies mailed on July 19, 2012 to:
MAURA J. KRAFT
NORINO MANAGEMENT INC
LOCAL OFFICE #63
ARNOLD M. ZERWITZ ESQ.