

- DECISION -

Claimant:
ELIZABETH SCHWENDENMANN

Decision No.: 5048-BR-13

Date: December 13, 2013

Appeal No.: 1315882

S.S. No.:

Employer:
THE HON COMPANY LLC

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: January 12, 2014

REVIEW OF THE RECORD

After a review of the record, and after deleting the ninth sentence of the second paragraph, the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

The day after her supervisor explained the situation to the claimant, the claimant spoke with the Director of the employer. The Director reiterated the supervisor's statement that, in order for the claimant to have another three weeks of employment, she must submit a written resignation by the next day. The Director clarified that the claimant would be discharged, but not for any disciplinary or performance reasons, if she did not resign because the employer had decided to not use remotely-based workers in positions such as the claimant's.

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 her appeal, the claimant disputes some of the hearing examiner’s findings of fact and the conclusions of law in the hearing examiner’s decision. The claimant reiterates her testimony and argues that she had no real option but to resign her employment. The Board agrees with the claimant’s contentions.

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. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. Sufficient evidence exists in the record from which the Board may make its decision.

The Board has thoroughly reviewed the record from the hearing but disagrees with the hearing examiner’s decision. The claimant may not have gone to the employer’s human resources department, but she talked specifically with the Director. The Director informed the claimant that, if she would immediately resign, she would have three more weeks of employment. The Director made it clear to the claimant that her termination would occur because of the employer’s decision to use locally-based personnel rather than a long-distance worker such as the claimant. A claimant is expected to exhaust “all reasonable alternatives before leaving work” *see Paynter [above]* but is not required to exhaust all possible alternatives. The claimant, here, should not be expected to speak to anyone else in management once she talked to the Director.

The claimant quit because she learned she would be discharged if she did not. The only reason for the claimant's impending discharge was that the employer had decided to change the way it operated with respect to remote-based employees, of which the claimant was one. There were no performance problems and no disciplinary problems with the claimant. This was a simple business decision which had a negative impact on the claimant. The Board finds that the employer's decision gave the claimant good cause to resign from this employment.

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 had 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 THE HON COMPANY LLC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

ELIZABETH SCHWENDENMANN

THE HON COMPANY LLC

THE HON COMPANY LLC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ELIZABETH SCHWENDENMANN

SSN #

Claimant

vs.

THE HON COMPANY 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: 1315882

Appellant: Employer

Local Office : 65 / SALISBURY

CLAIM CENTER

July 25, 2013

For the Claimant: PRESENT

For the Employer: PRESENT, BRAD SARLIN, JOHN MUMMA

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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

FINDINGS OF FACT

The claimant, Elizabeth Schwendenmann, worked for The Hon Company, LLC from September 24, 2012 until April 12, 2013. The claimant earned \$74,200.00 per year while working full time as an IT Business Consultant.

The claimant was in training for a position where she worked remotely from her home in Maryland while the employer was physically located in another state. She periodically travelled to the home office and also travelled to meet with clients. Three (3) weeks before her last day of work, the claimant travelled to the home office and met with her immediate supervisor. Her training had not been going very well, mainly based on the arrangement for her to work remotely. He told her that the company was going to bring other

people into her role with a different set of skills and who could work in the home office. The claimant asked if he could be more direct and asked if she should be looking for other work in the near future. Her supervisor told her that she should. She asked if she could have three (3) weeks and her supervisor told her that she could, but she had to submit a resignation within two (2) days. The claimant did not contact anyone in the employer's Human Resources Department or anyone further up in the employer's chain of command to seek any accommodation or relief before she submitted her resignation. The employer did not tell her when she would be terminated. She had not been given a performance review or was she disciplined before her meeting with her supervisor. The claimant's last day of work after submitting a resignation was April 12, 2013.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits where he or she is discharged or suspended from employment because of behavior which demonstrates gross misconduct. The statute defines gross misconduct as conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training, et al. 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

Md. Code, Ann., Labor & Emp. Article, Section 8-1002 provides that an individual shall be disqualified from receiving benefits when he or she was discharged or suspended from employment because of behavior that demonstrates gross misconduct. The statute defines gross misconduct as repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

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).

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 term "leaving work voluntarily" is not defined anywhere in Section 8-1001, and absent some imperative reason for enlarging its meaning, the term should be construed as having its ordinary and commonly accepted meaning. Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975).

The phrase "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 own choice, intentionally, of his own free will, terminated the employment. Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975).

A claimant who resigns in lieu of discharge does not show the requisite intent to quit under Allen v. CORE Target City Youth Program, 275 Md. 69 (1975). Therefore, a resignation in lieu of discharge shall be treated as a termination under Sections 8-1002 or 8-1003 of the law. Miller v. William T. Burnette & Company, Inc., 442-BR-82.

Where a claimant quits because he feared a discharge was imminent, but had not been informed he was discharged, the resignation is without good cause or valid circumstances. Roffe v. State of South Carolina Wateroe Correction Institute, 576-BR-88.

EVALUATION OF EVIDENCE

The first determination that must be made in an unemployment hearing is whether the claimant quit or was discharged. That is, it must be decided who was the moving party to cause the separation. In the instant case the employer informed the claimant that she would be replaced and that she should seek other work in the near future and suggested that she submit a letter of resignation. The claimant resigned. As such, the claimant quit her job.

In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence presented at the hearing that the quit was for either good cause or valid circumstances, as those terms are defined above. Hargrove v. City of Baltimore, 2033-BH-83. In the instant case, this burden has not been met.

The employer told the claimant that she would be terminated at some unspecified date in the future. This therefore was not a quit in lieu of discharge as set forth in Allen, Miller and Roffe, *supra*. The claimant was told to look for another job. The employer had not informed her that she would be fired at any particular time. She accepted this and resigned without pursuing any alternatives or remedies through her employer. The claimant has failed to demonstrate that her quit was for good cause or valid circumstances as those terms are defined above. An unemployment penalty will therefore be imposed pursuant to Md. Code Ann., Labor & Emp. Article, Section 8-1001.

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 April 7, 2013 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 Examiner is reversed.

B. Taylor

B. Taylor, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 09, 2013. 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: July 16, 2013

DW/Specialist ID: WHG32

Seq No: 003

Copies mailed on July 25, 2013 to:

ELIZABETH SCHWENDENMANN

THE HON COMPANY LLC

LOCAL OFFICE #65

THE HON COMPANY LLC