DLLR
STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION

ROBERT L. EHRLICH, Jr., Governor
MICHAEL S. STEELE, Lt. Governor
JAMES D. FIELDER, Jr., Ph.D., Secretary

Board of Appeals
Donna Watts-Lamont, Chairperson

-DECISION-

Claimant:
DONALD L HALL JR

Employer:
C BROWN EXCAVATING INC

Decision No.: 701-BR-06

Date: March 29, 2006

Appeal No.: 0523637

S.S. No.:

L.O. No.: 64

Appellant: Agency

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: April 28, 2006

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner but reaches a different conclusion of law.

Voluntarily quitting one's job to accept better employment cannot constitute good cause within the meaning of Section 8-1001 as a matter of law. *Total Audio - Visual v.* DLLR, 360 Md. 387, 395, 758 A.2d 124, 128 (2000)("[a] plain reading of Section 8-1001 makes clear that leaving employment for a better paying job does not constitute 'good cause'.") It may, however, constitute "valid circumstances" if it can be shown that the reasons for quitting meet the "necessitous or compelling" test of Section 8-1001(c)(ii) (Section 8-1001(c)(i) is inapplicable as a matter of law in cases such as the one at bar. The Court of Appeals found, "[n]ot being directly related to, attributable to or connected with the employee's employment or the actions of that employing unit, offers of higher pay as an inducement to leave existing employment must fall, if at all into [Section 8-1001(c)(ii).")

This is a "stricter test" than good cause test. *Plein v.* DLLR, 369 Md. 421 (2002). Under this stricter test the Court of Appeals requires that more needs to be shown than that the precipitating event or cause "would reasonably [have] impel[led] the average able-bodied qualified worker to give up his or her employment." *Total Audio - Visual, supra, quoting Board of Educ. of Montgmery County v. Payner,* 303, Md. 22, 29, 491 A.2d 1186, 1189-90 (1985).

The Board's current interpretation of *Total Audio - Visual* read in conjunction with the *Plein* decision finds that voluntarily quitting one's job for purely economic reasons is neither "necessitous" nor "compelling" under Section 8-1001. To the extend that this interpretation is inconsistent, Gagne v. Potomac Talking Book Services, Inc., 374-BH-03 in the Board overruled its prior precedent decision in *Gaskins v.* UPS, 1686-BR-00.

There must be a showing of something more connected with the conditions of the prior employment which motivated the claimant to quit his or her job to better employment to constitute a valid circumstance within the meaning of Section 8-1001. The Court of Appeals has stated, "Accepting more money and changing jobs is as much of a gamble and thus, as much of a personal matter as going in to business for oneself. In [the Court of Appeals'] view, it is unmistakably clear that Section 8-1001(a) was not designed to provide benefits when the precipitating cause for the voluntary leaving of employment was for higher pay or a better job. Instead, it was designed to prevent hardship to persons who lose their job through no fault of their own." *Plein v.* DLLR, 369 Md. 421 (2002), *quoting Total Audio - Visual,* (In *Plein, supra,* the claimant was employed by Atlas Tile & Terrazo as a tile setter's helper at a job paying $9.00 per hour. He accepted employment with Home Depot, U.S.A. as a sales associate in the floor and wall department. The Home Depot job paid $12.00 per hour with the prospect of receiving, after a waiting person, a health insurance plan and stock purchase options and, after one year, two weeks vacation and sick leave. The claimant left his employment with Atlas and began working at Home Depot on August 14, 2000. On September 27, 2000, the claimant was laid off through no fault of his own. The Courts of Appeals found that the claimant was not entitled to unemployment benefits under the "necessitous or compelling" test of Section 8-1001 under its interpretation and under the authority of *Total Audio - Visual,* 360 Md. 387, 400-01, 758, A.2d 124, 131-32 (2000)). The Court explained in *Plein,* "In Total Audio-Visual, this Court, albeit, and perhaps significantly so, a sharply divided one, determined, and held that the General Assembly did not intend that a person who voluntarily terminates his or her otherwise satisfactory employment for other employment with better pay be eligible to receive unemployment benefits when laid off through no fault of his or her own by the subsequent employer.

In the instant case, the reasons that the claimant voluntarily quit his job were purely economic in nature. Therefore, his reasons for quitting cannot be considered good cause as a matter of law. Additionally, the claimant has not met his burden of demonstrating that the reasons he quit his employment were "necessitous or compelling" so as to constitute valid circumstances within the meaning of Section 8-1003. The hearing examiner's decision shall be reversed.

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. He is disqualified from receiving benefits from the week beginning September 18, 2005 and until the claimant becomes re-employed, earns at least fifteen times his weekly benefit amount and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.

Clayton A. Mitchell, Sr., Associate Member

Francis E. Sliwka, Jr., Associate Member

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