

**- DECISION -**

Claimant:  
EDWARD A PURCELL JR.

Decision No.: 749-BR-01  
Date: April 09, 2001  
Appeal No.: 0019805  
S.S. No.:  
L.O. No.: 60  
Appellant: Claimant

Employer:  
RTA FURNITURE DISTRIBUTORS INC

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

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**- 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: May 09, 2001

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**REVIEW ON THE RECORD**

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner. The Board agrees that the claimant voluntarily quit his job with RTA Furniture Distributors, Inc., without good cause within the meaning of LE, Section 8-1001(b). However, the Board finds that the claimant has proven valid circumstances warranting a reduced penalty.

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 serious, 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.

The Hearing Examiner correctly cited the Board's precedent decision of **Gaskins v. UPS**, 1686-BR-00, in which the Board held that the Maryland Court of Appeals decision in the case of **Total Audio-Visual Systems, Inc. v. DLLR**, precludes a finding of good cause, but left the door open for a finding of valid circumstances if a claimant can show that his reason for leaving one job for another job met the necessitous and compelling standard of LE, Section 8-1001(c)(1)(ii). The Hearing Examiner concluded that the claimant here did not meet this standard. The Board disagrees.

The financial package at the new job was substantially better than the former job including a 40% increase in base salary plus retirement benefits and a 50% increase in vacation time. In addition, when the claimant first worked at RTA he was eligible to receive and often did receive monthly bonuses; however, this bonus system was eliminated by RTA. RTA had also informed the claimant they would train him in kitchen design, but the training did not take place, despite the claimant's repeated requests. Finally, the claimant's commute time was reduced from approximately 45 minutes each way to five minutes.

Looking at all these factors combined, the Board concludes that the claimant has proven a compelling reason for quitting his job with RTA, leaving him no reasonable alternative, within the meaning of the statute. For these reasons, the decision of the Hearing Examiner is reversed.

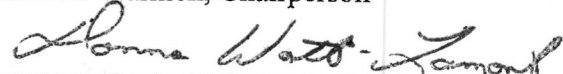
### DECISION

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. He is disqualified from receiving benefits from the week beginning October 8, 2000 and the nine weeks immediately following.

The decision of the Hearing Examiner is reversed.

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Hazel A. Warnick, Chairperson



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Donna Watts-Lamont, Associate Member

Copies mailed to:

EDWARD A. PURCELL JR.  
RTA FURNITURE DISTRIBUTORS INC  
LOCAL OFFICE #60  
JUST CABIN  
Michael Taylor, Agency Representative

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

EDWARD A PURCELL JR.

SSN #

**Claimant**

vs.

RTA FURNITURE DISTRIBUTORS 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: 0019805

Appellant: Claimant

Local Office : 60 / TOWSON CALL  
CENTER

February 15, 2001

**For the Claimant : PRESENT**

**For the Employer : PRESENT , GREGORY GILL**

**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 in December of 1998 and his last day worked was October 12, 2000. The claimant was employed as a sales associate earning \$10.00 per hour. In addition to his salary, he received one week's vacation, a health and dental policy with which he had a co-pay and a life insurance policy. There had been a bonus system, but that had been stopped. The claimant voluntarily quit this position effective October 12 without giving notice in order to take another job.

The claimant's new job was with Lowe's Home Improvement Center. The claimant was to be paid \$14.00 per hour as the Department Head of Kitchen Designs. The claimant was also to receive two-weeks vacation, health and dental insurance with less of a contribution, life insurance, a 401K plan, and stock options. In

addition, the new job was located five minutes from his home while he was required to drive approximately three quarters of an hour to the job at RTA Furniture.

When the claimant left RTA Furniture, he had the job with Lowe's Home Improvement lined up, though he did not start the job until two weeks later. He told Lowe's that he needed to give his employer two weeks notice. However, because of a controversy that took place in October with the Area Manager, the claimant left abruptly on October 12 and then started the job with Lowe's Home Improvement Center two weeks later.

### CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996) 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 claimant had the burden to show by a preponderance of the evidence that he voluntarily left this position for a good cause or valid circumstance. The Board of Appeals, in the recent case of Gaskins v. United Parcel Service, 1686-BR-00 adopted the decision of the Maryland Court of Appeals in the case of Total Audio-Visual Systems, Inc. v. DLLR. Leaving a job is no longer considered good cause to support a voluntary quit. The Board did adopt the Court of Appeals holding that if a claimant could show that the acceptance of the new job was "of such a necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment" valid circumstances might be found. Based on all of the testimony provided, I find that the claimant has not met his burden of proof to show that the reason he left was of such a necessitous or compelling nature. Accordingly, I find that a valid circumstance also did not exist in this case. I find that the claimant has not met his burden of proof.

### 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 (Supp. 1996). Benefits are denied for the week beginning October 8, 2000 and until the claimant becomes re-employed 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 Claim Specialist is modified.

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A S Levy, 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 410-949-0022 or 1-800-827-4839. 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.**

**Notice of Right to Petition for Review**

Any party may request a review either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by March 02, 2001.

Note: Appeals filed by mail are considered timely on the date of the U. S. Postal Service postmark.

Date of hearing : January 03,2001  
DW/Specialist ID: UTW1M  
Seq No: 001  
Copies mailed on February 15, 2001 to:  
EDWARD A. PURCELL JR.  
RTA FURNITURE DISTRIBUTORS INC  
LOCAL OFFICE #60  
JUST CABIN