

- DECISION -

Claimant:
ROSE M METTLE

Decision No.: 853-BR-01

Date: April 23, 2001

Appeal No.: 0103053

S.S. No.:

Employer:
PIKESVILLE NURSING-CONVA HOME
OF BALTO CO INC

L.O. No.: 60

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: May 23, 2001

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the following findings of fact and reverses the decision of the Hearing Examiner.

Despite the assertion of the claimant that she was not "fired", the facts of this case support a finding that the claimant was discharged from her supervisory position within the meaning of Section 8-1003. There is insufficient evidence in the record to support a finding that the claimant formed the requisite intent to quit her supervisory position within the meaning of section 8-1001.

The claimant had performed services for over 23 years for this employer. She worked as a full-time supervisor on Tuesday and Thursday from 3 p.m. until 11 p.m. and on Saturday and Sunday from 7 a.m. until 3:30 p.m.

The employer's ownership changed in September 2000. Subsequently, the employer advertised for a replacement for the claimant's position without the claimant's knowledge. On January 2, the claimant was informed that her position had been replaced. This new supervisor would work Monday through Friday from 3 p.m. until 11 p.m. The claimant was told that "she would have plenty to do" but would not be the supervisor. The Board finds that this transaction was not a lateral transfer nor was it a demotion for cause. She was allowed to continue working until January 16, 2001.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from 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, within the meaning of Section 8-1003 of the Labor and Employment Article. (See, Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113).

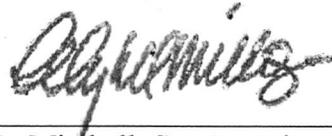
Section 8-1001 of the Labor and Employment Article provides that individuals shall be disqualified from the receipt of benefits where their unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without 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 Board finds that when the claimant was told that a new person was replacing her in her supervisory position and that she would "have other things to do", she was discharged from her supervisory position within the meaning of section 8-1003. The Board finds that a preponderance of the evidence does not support a finding that the claimant voluntarily quit her supervisory position with this employer within the meaning of Section 8-1001. The Board notes that the employer, duly notified of the date, time and place of the hearing, failed to appear. The Board finds that the employer has not met its burden of proof of showing that any action by the claimant constituted misconduct within the meaning of Section 8-1003. Therefore, the decision of the hearing examiner shall be reversed.

DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct, connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon her separation from employment with Pikeville Nursing-Conva Home of Balto. Co Inc.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member

Hazel A. Warnick, Chairperson

Copies mailed to:

ROSE M. METTLE
PIKESVILLE NURSING-CONVA HOME
LOCAL OFFICE #60
LARRY E. HAINES, STATE SENATOR
PIKESVILLE NURSING-CONVA HOME
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

ROSE M METTLE

SSN #

Claimant

vs.

PIKESVILLE NURSING-CONVA HOME
OF BALTO CO 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: 0103053
Appellant: Claimant
Local Office : 60 / TOWSON CALL
CENTER

March 21, 2001

For the Claimant : PRESENT

For the Employer :

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 was employed as supervisor by Pikesville Nursing-Convalescent Home of Baltimore County, Inc., from September 29, 1977 through January 16, 2001, earning wages in the amount of \$25 per hour. The claimant was employed on a full-time basis, working an average of 30 hours per week. The claimant was scheduled to work on Tuesdays and Thursdays from 3:00 p.m. to 11:00 p.m. and on Saturdays and Sundays from 7:00 am. to 3:30 p.m.

In September 2000, the nursing home was purchased by Ruxton Health Care II. On or about January 2, 2001, the director of nursing called the claimant into her office to tell her that they had hired another

supervisor for the 3:00 p.m. to 11:00 p.m. shift and that she would be placed in another position. When the claimant asked why the change was being made, she was told it was because of continuing of service.

The claimant was upset and angry because she had not been informed of this change prior to the time that the employer placed an ad in the newspaper for the position. The claimant immediately submitted her letter of resignation giving her employer two weeks' notice.

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

"When a claimant voluntarily leaves work, he has the burden of proving that he left for good cause or valid circumstances." Hargrove v. City of Baltimore, 2033-BH-83. In the instant case, the claimant has failed to sustain this burden of proof.

The credible evidence presented indicated that the claimant left her position for personal reasons. She was angry that her employer had not notified her of the change prior to hiring someone else to work her hours. However, the claimant could have continued to work for the employer under similar circumstances. The claimant made no effort to resolve the problem prior to quitting her employment. Accordingly, insufficient evidence has been presented to show good cause or valid circumstances for the quit.

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 January 14, 2001, 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 affirmed.

A K Thompson, 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, 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 April 5, 2001. 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

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

Date of hearing : March 07,2001
RM/Specialist ID: UTW3T
Seq No: 001
Copies mailed on March 21, 2001 to:

ROSE M. METTLE
PIKESVILLE NURSING-CONVA HOME
LOCAL OFFICE #60