

- DECISION -

Claimant:
ROSALI VILLALTA

Decision No.: 1279-BR-11

Date: March 02, 2011

Appeal No.: 1047248

S.S. No.:

Employer:
L S J V LTD

L.O. No.: 62

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: April 01, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the following findings of fact and reverses the hearing examiner's decision.

The claimant was employed as a part-time "as-needed" helper from September 1, 2010 through November 3, 2010. The claimant is unemployed as the result of a voluntary quit.

The claimant worked for a landscaping business on an as-needed basis. The claimant reported to work everyday; however, most days the claimant was not sent on a work assignment. The claimant needed more work hours. On November 3, 2010, the claimant requested that he receive either twenty-five cents more per hour or more hours or he would

have to search for another job. The employer told the claimant he “had to do what he had to do”.

Subsequent to November 3, 2010, the claimant continued to report for work. For days thereafter, the claimant was not sent on a work assignment. The claimant voluntarily quit due to a lack of suitable work with this employer.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

“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 three 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; (3) when the claimant's quit is caused by the individual leaving employment (i) to follow a spouse serving in the United States military or (ii) because the claimant's spouse is a civilian employee of the military or of a federal agency involved with military operations and the spouse's employer requires a mandatory transfer to a new location. *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(1)(iii)*. 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 instant case, the Board finds that the claimant quit due to a lack of regular work. The Board finds this a substantial cause directly related to the conditions of employment and supports a finding of valid circumstances. The Board finds insufficient evidence that the claimant's reasons for quitting constituted good cause only because he was not guaranteed a specific amount of work hours. However, the amount of hours the claimant was assigned was not suitable; there was a lack of reliable, steady part-time work.

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 did not meet his burden of demonstrating that he quit for good cause within the meaning of §8-1001.

However, the Board finds based on a preponderance of the credible evidence that the claimant did not meet his burden of demonstrating that he quit for valid circumstances within the meaning of §8-1001.

The Board finds only the minimum five-week penalty is measured and appropriate on the facts of this case.

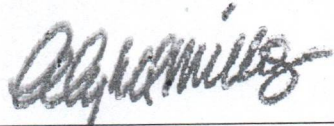
The hearing examiner's decision shall be reversed for the reasons stated herein.

The employer should note that, provided that it has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Emp. Art. § 8-616*, any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. See *Md. Code Ann., Lab. & Empl. Art., § 8-611(e)(1)*.

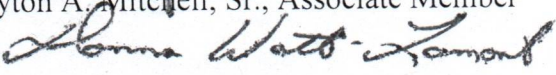
DECISION

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. The claimant is disqualified from receiving benefits from the week beginning October 31, 2010 and the four weeks immediately following.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

ROSALI VILLALTA

L S J V LTD

MOYERS LAWN SERVICE

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ROSALI VILLALTA

SSN #

Claimant

vs.

L S J V LTD

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: 1047248

Appellant: Claimant

Local Office : 62 / COLLEGE PARK

CLAIM CENTER

January 19, 2011

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 began working for this Employer on or about September 1, 2010. At the time of separation, the Claimant was working as a helper. The Claimant last worked for the Employer on or about November 3, 2010, before voluntarily resigning his position.

The Claimant worked for a landscaping company. He did not have guaranteed hours. Often when he came to work, he was either not sent out or was the last man sent. The claimant decided to ask for more hours and more money. When the supervisor told him she couldn't provide either, he decided to look for other work. He did not return to work for this Employer.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 provides that an individual is disqualified from receiving benefits when unemployment is due to leaving work voluntarily. The Court of Appeals interpreted Section 8-1001 in Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975): "As we see it, the phrase 'leaving work voluntarily' has a plain, definite and sensible meaning...; 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, of his or her own free will, terminated the employment." 275 Md. at 79.

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.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

The claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit his position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. Hargrove v. City of Baltimore, 2033-BH-83. In this case, this burden has not been met.

The credible evidence presented indicated the Claimant left his position for personal reasons. Insufficient evidence was presented to show that he attempted to resolve the problems prior to quitting.

It is thus determined that the Claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause/valid circumstances within the meaning of the sections of law cited above.

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 October 31, 2010 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 Specialist is affirmed.

A K Thompson

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 410-767-2404. 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 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 February 03, 2011. 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: January 10, 2011

DW/Specialist ID: WCP6E

Seq No: 004

Copies mailed on January 19, 2011 to:

ROSALI VILLALTA

L S J V LTD

LOCAL OFFICE #62

MOYERS LAWN SERVICE