

- DECISION -

Claimant:
GARY L NICHOLSON

Decision No.: 1331-BR-14

Date: May 07, 2014

Appeal No.: 1404740

Employer:
MARE INC *11*

S.S. No.:

L.O. No.: 63

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: June 06, 2014

REVIEW OF THE RECORD

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

The claimant worked twenty years as a full-time leach mechanic/technician, earning a commission based salary. The claimant needed to sign up for training classes that were needed to maintain his required certification. The claimant went to the office manager and asked her to help him register for the classes. The claimant continued to pressure the office manager to help him until she acquiesced.

The office manager was initially unable to access the site and she ended up changing the password for the site that the service administrator/owner has set up. The service administration manager, who was the owner of the business, came back to the office and was informed of the action that had taken place. The manager/owner became enraged. He cursed, yelled and jabbed his fingers on the chest of the claimant, in front of other employees, blaming the claimant for changing his password. The office manager was the actual party who changed the password and she was only advised not to do it again.

The claimant finished the work day and did not return to work. The owner did not contact the claimant to apologize for the incident. The claimant sent a resignation letter. The claimant had no prior warnings for violations of company policy. The employer, however, had had a prior incident with the claimant.

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.

The weight of the credible evidence established that the claimant voluntarily quit his job for good cause. In a similar case, the employer's use of degrading and insulting language directed at the claimant in a loud tone of voice for over an hour, in circumstances where other employees were able to hear it, constitutes good cause for resignation. *Sheckles v. Executive Commissary Ltd., 790-BH-81*. In the instant case, the employer cursed at the claimant and yelled at him, where other employees could hear, and kept jabbing him in the chest for changing the employer's password. The claimant was not the person who actually changed the password. This was not the first time that the owner lost his temper and accosted the claimant. The employer did not apologize for his behavior as he "thought that it was not his job to hunt him (the claimant) down".

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 his burden of demonstrating that he quit for good cause within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1001*. The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

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 MARE INC

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

GARY L. NICHOLSON

MARE INC *11*

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

GARY L NICHOLSON

SSN #

vs.

MARE INC

Claimant

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: 1404740
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

March 20, 2014

For the Claimant: PRESENT

For the Employer: PRESENT, BRIAN LANCASTER

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, Gary Nicholson, worked for the above captioned employer, Mare Inc., from March 4, 1994 until January 22, 2014 as a leach mechanic/technician earning a commission-based salary in a full time capacity. The claimant voluntarily quit his position because his employer cursed at him.

The employer's operation is owned by Brian Lancaster and the claimant was with the employer for almost 20 years at the time of separation. The claimant wanted to sign up for some service training classes for his certification which expired later in 2014. While Mr. Lancaster was out of the office on January 22, 2014 the claimant went to Suzie Lynch, the office manager, and asked her to help him register for some classes.

Ms. Lynch was unable to access the site for the registration and she and the claimant ended up changing the password for the site that Mr. Lancaster, who was the service administration, had set up. When Mr. Lancaster came back later that day Ms. Lynch informed him that the password situation had been complicated by her involvement with the claimant. Specifically, Ms. Lynch told Mr. Lancaster that the claimant had "pestered" her until she acquiesced to try to register him for the training and, in doing so, had changed the password for the log-in.

This enraged Mr. Lancaster so he confronted the claimant and cursed at him asking him "Why the fuck did you change the password?" while poking the claimant in the chest. The claimant finished the day of work and then never went back. He discussed the issue with his wife and then he sent the employer an email to notify them that he was quitting because he was embarrassed by the way he had been treated.

CONCLUSIONS OF LAW

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 credible evidence presented at the hearing shows that the claimant voluntarily quit this position. In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence, 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.

The claimant credibly testified that he was hurt and upset by the way he was treated by Mr. Lancaster on his last day. Mr. Lancaster accepted his portion of the blame and credibly testified that the registration process was not so pressing that the claimant could have waited for him to return. However, after almost 20 years on the job the claimant had other options than to resign: he could have waited to approach Mr. Lancaster at a later time. Mr. Lancaster could have handled the situation better as well.

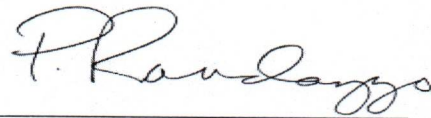
The credible evidence supports the finding that the claimant quit for valid circumstances connected to the conditions of employment. He was understandably upset when he was accosted by his employer. Mr. Lancaster was also understandably upset that the claimant caused what he perceived to be an unnecessary issue by not waiting for him to return but this does not excuse him from cursing at the claimant and poking him with his finger.

Therefore, I hold that the claimant voluntarily resigned without good cause but with valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Employment Article, Section 8-1001 pursuant to this separation from employment.

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning January 19, 2014 and for the 9 weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Examiner is affirmed.



P G Randazzo, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 04, 2014. 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: March 12, 2014

DW/Specialist ID: WCU3R

Seq No: 002

Copies mailed on March 20, 2014 to:

GARY L. NICHOLSON

MARE INC

LOCAL OFFICE #63