

**- DECISION -**

Claimant:  
BARBARA A PRICE

Decision No.: 2750-BR-14

Date: October 31, 2014

Appeal No.: 1408222

Employer:  
PIER I IMPORTS US INC

S.S. No.:

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.

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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: December 1, 2014

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**REVIEW OF THE RECORD**

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on May 6, 2014. That Decision held that the claimant had voluntarily quit her employment, without good cause or valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were not allowed for the week beginning August 18, 2013, and until the claimant has become reemployed, earned at least fifteen (15) times her weekly benefit amount, and become separated from that employment under non-disqualifying conditions.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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. *Md. Code Ann., Lab. & Empl. Art., §8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant appeared and testified. The claimant was afforded the opportunity to offer documentary evidence and to present a closing statement. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing or to allow additional legal argument in this matter. Sufficient evidence exists in the record from which the Board may make its decision.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts, however, are incomplete and are insufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant was concurrently working another part-time job. She applied for and accepted this position believing the hours were day-time and would not conflict with her other employment. When the claimant began her orientation with this employer, she learned the hours would be in the evenings, the same as her other work. The claimant explained the conflict to the employer, but was told the hours for this position were evenings. Because this was a seasonal position the claimant concluded it made better sense to retain her other, permanent position than to accept a job which was quite likely to end in a few months.

*Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*, 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 valid circumstance for voluntarily leaving work is a substantial cause 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. To establish a valid circumstance for leaving one's employment, a claimant is expected to have attempted to adjust the grievance, or explored other options, prior to leaving unless such action would have been futile or fruitless.

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).

In her appeal, the claimant reiterates her testimony from the hearing. The claimant otherwise does not cite to the evidence of record and makes no other contentions of error.

The Board disagrees with the hearing examiner's analysis and decision in this matter. The claimant quit this employment because there was a substantial change in the terms and conditions of employment between the time the claimant accepted the position and the time the claimant began her employment. The claimant applied for and accepted a job, working day-time hours. On her first day, she learned she would be working evening hours, with no assurance of continued employment after three months. The claimant's permanent part-time job would conflict with this new part-time position. She quit this new job only because of this conflict in hours, of which the claimant was unaware when she accepted the new position.

The employer did not appear at the Lower Appeals hearings and offer any evidence that the claimant should have known the hours were conflicting at the time she applied for or accepted the position.

The Board finds that this was a significant difference in the terms and conditions of employment sufficient to support a finding that the claimant had good cause for quitting her employment.

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 upon a preponderance of the credible evidence, that the claimant did meet her burden of proof and show that she quit this employment with good cause within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The decision shall be reversed for the reasons stated herein.

### DECISION

The Board holds that the claimant voluntarily quit this employment with good cause within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*. The claimant is allowed from the receipt of benefits from the week beginning August 18, 2014, if the claimant is otherwise eligible.

The Hearing Examiner's decision is Reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

BARBARA A. PRICE

PIER I IMPORTS US INC

PIER I IMPORTS US INC

Susan Bass, Office of the Assistant Secretary

## UNEMPLOYMENT INSURANCE APPEALS DECISION

BARBARA A PRICE

SSN #

**Claimant**

vs.

PIER I IMPORTS US 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: 1408222

Appellant: Claimant

Local Office : 60 / LARGO

May 06, 2014

**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). Whether this appeal was filed timely within the meaning of Section 806 of the Labor and Employment Article.

### FINDINGS OF FACT

The Agency mailed copies of a benefit determination to the parties in this case. The benefit determination had an appeal deadline of March 26, 2014. The claimant, Barbara A. Price, filed her appeal request via facsimile dated March 17, 2014.

The claimant began working for this employer, Pier 1 Imports US, Inc., on August 20, 2013, and her last day worked was August 20, 2013. At the time of claimant's voluntary quit, she worked part-time, seasonal as a Warehouse worker, earning an hourly salary of \$10.00.

On August 20, 2013, claimant made a decision to voluntarily quit her position due to various personal and financial reasons. Employer accepted claimant's resignation.

The employer did not express any dissatisfaction with claimant's work. The employer did not discipline the claimant regarding the performance of her duties. The claimant's job was not in jeopardy at the time of her voluntary quit and continuing work was available.

### CONCLUSIONS OF LAW

Maryland Code Annotated, Labor & Employment Article, § 8-806(e) provides, in essence, that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. COMAR 09.32.06.01(B) provides that an appeal is considered filed on the earlier of the following: (a) the date that is delivered in person to any office of the Department of Labor, Licensing and Regulation ("DLLR") that accepts appeals, or (b) the date on which it is postmarked by the U. S. Postal Service. Appeals filed after that date, shall be deemed late and the determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. COMAR 09.32.06.01B(3) provides that "the period for filing an appeal from the Claims Specialist's determination may be extended by the Hearing Examiner for good cause shown." Good cause means due diligence in filing the appeal. *Francois v. Alberti Van & Storage Co.*, 285 Md. 663 (1979) and *Matthew Bender & Co. v. Comptroller of the Treasury*, 67 Md. App. 693 509A 2d 702 (1986).

Maryland Code Annotated, Labor and Employment Article, § 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.

To establish good cause, the claimant must show the cause for leaving is directly attributable to, arising from or connected with the conditions of the employment or the actions of the employer. Purely personal reasons, no matter how compelling they may be, cannot constitute good cause. *Board of Education of Montgomery County v. Paynter*, 303 Md. 22, 491 A.2d 1186 (1985).

The "necessitous or compelling" standard is the standard which should be applied when the reason for leaving the job was for personal reasons, under Section 8-1001(c)(1)(ii). *Wilson v. Vincent A. Butler and Associates, Inc.*, 1691-BR-93.

### EVALUATION OF EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, either the appeal was filed timely or it was filed late for reasons which constitute good cause, pursuant to the Maryland Unemployment Insurance Law. *Cooper v. Holy Cross Hospital*, 328-BR-86. The claimant has shown that she diligently filed her appeal in a timely manner.

Accordingly, I hold the claimant met her burden in this case and filed a timely appeal pursuant to Maryland

Code Annotated, Labor & Employment Article, § 8-806, allowing the Hearing Examiner to reach and rule upon the substantive issues in this case.

The claimant had the burden to show, by a preponderance of the credible evidence, she voluntarily quit her position with this employer for reasons which 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, the claimant did not meet this burden.

The claimant resigned her position for personal reasons. Necessitous or compelling personal reasons may constitute valid circumstances. However, no necessitous or compelling situation can amount to a valid circumstance unless the claimant shows that there was no reasonable alternative other than to leave the employment. Claimant did not seek any alternatives to the voluntary quit. Claimant abandoned the opportunity to discuss alternatives with employer by voluntarily quitting. Accordingly, I hold the claimant failed to meet her burden in this case and the claimant's voluntary quit was neither for good cause nor due to a valid circumstance, and benefits are, therefore, denied.

### DECISION

IT IS HELD THAT the claimant filed a timely appeal within the meaning and intent of Maryland Code Annotated, Labor & Employment Article, § 8-806 (e), thus allowing the Hearing Examiner to reach and rule upon the substantive issues in this case.

IT IS FURTHER HELD THAT the claimant's unemployment was due to leaving work voluntarily, without good cause or valid circumstances, within the meaning of Maryland Code Annotated, Labor and Employment Article, § 8-1001 (Supp. 1996). Benefits are denied for the week beginning August 18, 2013 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 claimant may contact Claimant Information Service concerning other eligibility requirements at [ui@dllr.state.md.us](mailto:ui@dllr.state.md.us) or telephone (410) 949-0022 from the Baltimore region, or (800) 827-4839 from outside the Baltimore region. Deaf claimants with TTY may contact Client Information Service at (410) 767-2727, or outside the Baltimore region at (800) 827-4400.

The determination of the Claims Specialist is modified.



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D F Camper, 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 of Further Appeal

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a further appeal 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 May 21, 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: April 18, 2014

DW/Specialist ID: UTW45

Seq No: 002

Copies mailed on May 06, 2014 to:

BARBARA A. PRICE  
PIER I IMPORTS US INC  
LOCAL OFFICE #60  
PIER I IMPORTS US INC