

**- DECISION -**

Claimant:  
SYLVIA E BOYD

Decision No.: 532-BR-15

Date: March 16, 2015

Appeal No.: 1416900

Employer:  
BRINTON WOODS OF FRANKFORD  
LLC

S.S. No.:  
L.O. No.: 63

Appellant: Employer

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: April 15, 2015

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**REVIEW OF THE RECORD**

The employer has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on August 11, 2014. That Decision held that the claimant voluntarily left employment, with good cause, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were allowed provided other eligibility requirements were met.

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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered the opportunity to present closing statements. 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 allow additional argument. 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 not supported by substantial evidence in the record. The Board rejects those Facts and makes the following Findings of Fact:

The claimant began working for the employer as a housekeeper on June 1, 2010. On May 6, 2014, the employer imposed a three day suspension while an investigation was conducted regarding allegations that the claimant acted in an insubordinate, disruptive and disrespectful manner. The claimant was informed to return to work on May 9, 2014 and that she would be informed of the results of the investigation at that time. The claimant resigned effective May 8, 2014 because she assumed she would be terminated.

The Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

*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.

“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).

In its appeal, the employer argues that the claimant voluntarily resigned from her employment because she may have been discharged and that benefits should have been denied to her. The Board agrees. The Board finds that the claimant was never informed that her employment was being terminated. She elected to resign prior to being advised of the outcome of the employment’s investigation. The Board further finds

that the claimant's explanation for quitting does not rise to the level of good cause or a valid circumstance.

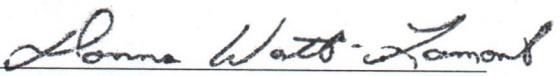
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

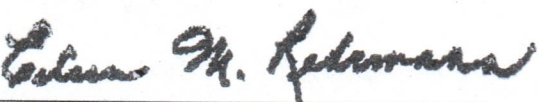
The Board finds, based upon a preponderance of the credible evidence, that the claimant did not meet her burden of proof and show that she left this employment for reasons which constitute good cause or valid circumstances within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The decision shall be reversed for the reasons stated herein.

### DECISION

The Board holds that the claimant left this employment voluntarily without good cause or valid circumstances within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*. The claimant is disqualified from the receipt of benefits from the week beginning June 1, 2014, until the claimant has become reemployed and earned at least fifteen (15) times her weekly benefit amount and become separated from that employment under non-disqualifying conditions.

The Hearing Examiner's decision is Reversed.

  
Donna Watts-Lamont, Chairperson

  
Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

SYLVIA E. BOYD

BRINTON WOODS OF FRANKFORD

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

SYLVIA E BOYD

SSN #

**Claimant**

vs.

BRINTON WOODS OF FRANKFORD  
LLC

**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: 1416900  
Appellant: Employer  
Local Office : 63 / CUMBERLAND  
CLAIM CENTER

August 11, 2014

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, DONALD KIRKLAND, CORRINE KERRER

**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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

**FINDINGS OF FACT**

The claimant, Sylvia Boyd, began working for this employer, Brinton Woods of Frankford, on June 10, 2010, and her last day worked was May 6, 2014. At the time of her separation from employment, the claimant worked full-time as a housekeeper.

The employer's policy provides that the combination of category I, II and III violations will result in termination. On May 6, 2014, the claimant was involved an incident with a resident and the resident's family member. The employer reviewed the situation, and received statements from two witnesses and from the claimant. The human resources director met with the claimant, and gave her a written disciplinary warning. The warning noted the claimant violated categories I, II and III, and the claimant was given a

three day suspension without pay from May 6, 2014 to May 9, 2014 while the incident was being investigated. The human resources director informed the claimant the witness statements supported the written disciplinary warning she was given, but did not allow the claimant to review the statements made against her. The claimant was directed to return to work on May 9, 2014, and the results of the investigation would be provided to her. By May 7, 2014, human resources had finished the investigation, and had made the decision to give the claimant a warning, instead of terminating her. The human resources did not inform the claimant of the decision, and on May 8, 2014, the claimant resigned.

### 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.

The employer's disciplinary action was taken in bad faith. Just as an employee has a basic duty of loyalty toward her employer, an employer has a basic duty to treat an employee in good faith. Where this duty is violated in regard to disciplinary procedures, good cause is established. Woerner v. White Marsh Mall, Inc., 2159-BR-92.

### 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 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 the case at bar, the claimant met this burden.

The claimant testified she thought she would be terminated because of the punitive language used in the written disciplinary warning, and based on the employer's policy. Although the claimant's conclusion was understandable, she admitted the employer did not terminate her at that time. The claimant provided testimony she resigned instead of having a termination on her record. The employer provided testimony a decision was made to give the claimant a warning instead of terminating her, but the claimant was not informed of the decision. The employer did not act in good faith by withholding notification of the decision, especially when all of the evidence indicated the claimant would be terminated. The employer has a basic duty to treat the claimant in good faith and violated this duty in regard to the disciplinary procedure. Under Woerner v. White Marsh Mall, Inc., good cause is established

Accordingly, I hold the claimant met her burden in this case and the claimant's voluntary quit was for good cause and benefits are, therefore, allowed.

## DECISION

IT IS FURTHER HELD THAT the claimant left the employment voluntarily but with good cause within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. No disqualification is imposed based upon this separation from employment with this employer. The claimant is eligible for benefits so long as all other eligibility requirements are met. The claimant may contact the Claimant Information Service regarding the other eligibility requirements of the law at [ui@dllr.state.md.us](mailto: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 Specialist is reversed.



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E K Stosur, 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 August 26, 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 : August 05,2014  
TH/Specialist ID: WCU1M  
Seq No: 001  
Copies mailed on August 11, 2014 to:

SYLVIA E. BOYD  
BRINTON WOODS OF FRANKFORD  
LOCAL OFFICE #63