

- DECISION -

Claimant:	Decision No.:	6049-BR-12
JOHN R LOWERY	Date:	December 19, 2012
	Appeal No.:	1231586
	S.S. No.:	
Employer:	L.O. No.:	65
PEP-UP-INC	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: January 18, 2013

REVIEW OF THE RECORD

After a review of the record, and after deleting "or about" from the first and third sentences of the first paragraph, the Board adopts the hearing examiner's modified findings of fact. However, the Board is of the opinion that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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)*.

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. 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 (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 (1985); also see *Bohrer v. Sheetz, Inc.*, Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984). 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 (1985).

"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. 250(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.

In his appeal, the claimant explains the circumstances surrounding his separation from subsequent employment. That separation was not at issue in this matter. The Board does not have jurisdiction of that later separation. Consequently, the Board will not address those contentions. As the hearing examiner properly explained to the claimant during the hearing, any separation from any base-period employer must be adjudicated with respect to the claimant’s qualification for benefits. Maryland does not look only to the last or most-recent separation in determining a claimant’s entitlement to benefits.

The claimant also contends he has a great financial need for benefits at this time. The Board understands this, but notes that economic conditions are not a factor to be considered when determining a claimant’s entitlement to benefits.

Concerning the issue of the claimant’s separation from this employment, he contends: “The main reason I quit this job was to get more hours as I was only averaging 25 – 30 hours per week.” This was also the primary focus of the claimant’s uncontested testimony from the hearing.

The Board has conducted a thorough review of the evidence of record from the Lower Appeals Division hearing. That evidence is sufficient for the Board to render its decision here. The evidence established that, at the time the claimant began this employment, he worked at least forty hours per week. Some weeks he worked more hours and this continued for nearly two years of employment. During the

claimant's final year, the employer's business had slowed for reasons not attributable to the claimant or to the employer. As a consequence, the claimant was only working, on average, about thirty hours per week. The claimant was paid by the hour for his work so that this reduction in available hours reduced his earning by one quarter.

The claimant needed to earn wages at or near the same level as when he began this employment. He sought another position and found one which assured him of at least forty hours per week. The claimant gave a two-week notice to the employer, explained his reasons, and left on good terms.

The question here is whether the claimant's reason for leaving his employment with this employer constitutes good cause or valid circumstances. The reduction in the claimant's hours was a detrimental change to the worker's conditions of employment.

The Board does find that the reduction, by one quarter, of the claimant hours and his earnings, was a job-related reason which would cause a reasonable worker to leave his or her employment. The claimant's reason for leaving was due to a detrimental change in the terms and conditions of his employment. The Board does not find this case to be analogous to the Court's decision in *Total Audio-Visual Systems, Inc., v. DLLR*, 360 Md. 387 (2000). The Court has deemed a leaving of employment for purely economic reasons to be a quit without good cause or valid circumstances. See, *Total Audio-Visual Systems, Inc., supra*. That case concerned a worker who left employment solely to accept new employment which offered a higher rate of pay. There had been no change in that worker's previous terms and conditions of employment.

Here, circumstances caused the claimant to suffer a substantial reduction in earnings. Those circumstances essentially and functionally changed the terms and conditions of his employment to his detriment. The Board finds this distinction to be sufficient to support a finding that the claimant had good cause for leaving his 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 on a preponderance of the credible evidence that the claimant did meet his burden of demonstrating that he quit this employment for good cause within the meaning of § 8-1001. The decision shall be reversed for the reasons stated herein.

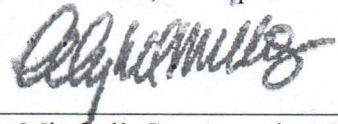
DECISION

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 PEP-UP-INC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

JOHN R. LOWERY

PEP-UP-INC

PEP-UP-INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

JOHN R LOWERY

SSN #

vs.

PEP-UP-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: 1231586

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

October 09, 2012

For the Claimant: PRESENT

For the Employer: PRESENT, MARTIN PEPPER, ROBIN OLSEN

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, John R. Lowery, began working for this employer, Pep-Up, Inc., on or about September 21, 2009. At the time of separation, the claimant was working full time as a fuel delivery driver earning \$16.50 per hour. The claimant last worked for the employer on or about April 25, 2012, before quitting for another job that promised him more hours.

The claimant's job for this employer required him to report for work between 6:00 a.m. and 7:00 a.m. He received delivery tickets for the day and worked until he had completed the daily deliveries. When the claimant initially worked for this employer he was generally able to work forty to forty-five hours.

However, for the past year the claimant's hours had averaged roughly thirty hours per week due to the employer having a lower volume of fuel sales as a result of weather and economic conditions. The claimant sought other employment that would provide him with more hours and when he found a job delivering masonry products for an employer that promised him forty to fifty-five hours per week, he quit this job to accept that employment.

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.

In Total Audio-Visual Systems, Inc. v. DLLR, 360 Md. 387 (2000), the Court held that an individual who has left his or her employment to accept other employment has not left his or her job for good cause as defined in Section 8-1001(b)(1) of the Labor & Employment Article of the Annotated Code of Maryland. This is because quitting ones job for purely economic reasons is neither necessitous nor compelling. See also Plein v. Dep't of Labor Licensing & Regulation, 369 Md. 421, 800 A.2d 757 (2002); Gagne v. Potomac Talking Book Services, Inc., 374-BH-03.

However, a finding of valid circumstances is appropriate if the claimant can show that accepting the alternative employment was "of such a necessitous and compelling nature that the individual had no reasonable alternative other than leaving the employment." Gaskins v. UPS, 1686-BR-00.

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 he 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 the case at bar, that burden has not been met. Under Maryland law, voluntarily quitting one job to accept another cannot constitute a quit for good cause as a matter of law. See Total Audio-Visual, *supra*. Furthermore, pursuant to the Board of Appeals decision in Gagne, *supra*, a voluntary quit for purely economic reasons, as in the instant case, is

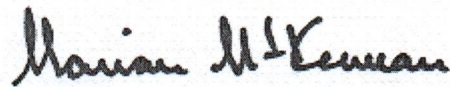
a quit for neither good cause nor valid circumstances. Therefore, benefits must be denied at this time.

It is thus determined that the claimant has failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or 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 April 22, 2012 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 modified.



M McKennan, 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

Any party 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 October 24, 2012. 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: October 02, 2012
DAH/Specialist ID: USB2D
Seq No: 001
Copies mailed on October 09, 2012 to:
JOHN R. LOWERY
PEP-UP-INC
LOCAL OFFICE #65