# -DECISION-

Claimant:
KAREN GRAVES

Decision No.: 1045-BR-12

Date: May 23, 2012

Appeal No.: 1140872

S.S. No.:

Employer:
BOARD OF EDUCATION OF BALTO CO
STE G

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.

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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: June 22, 2012

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## REVIEW OF THE RECORD

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

> The claimant voluntarily quit her job for several reasons. The new position paid more money, it was closer to home and if offered health care benefits. The employer did not offer the claimant health care benefits.

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.

Voluntarily quitting one's job to accept better employment cannot constitute good cause within the meaning of Section 8-1001 as a matter of law. *Total Audio - Visual v. DLLR*, 360 Md. 387, 395, 758 A.2d 124, 128 (2000)("[a] plain reading of Section 8-1001 makes clear that leaving employment for a better paying job does not constitute 'good cause'.") It may, however, constitute "valid circumstances" if it can be shown that the reasons for quitting meet the "necessitous or compelling" test of Section 8-1001(c)(ii). Section 8-1001(c)(i) is inapplicable as a matter of law in cases such as the one at bar. The Court of Appeals found, "[n]ot being directly related to, attributable to or connected with the employee's employment or the actions of that employing unit, offers of higher pay as an inducement to leave existing employment must fall, if at all into [Section 8-1001(c)(ii)]."

This is a stricter test than the "good cause" test. *Plein v. DLLR*, 369 Md. 421 (2002). Under this stricter test the Court of Appeals requires that more needs to be shown and that the precipitating event or cause "would reasonably [have] impel[led] the average able-bodied qualified worker to give up his or her employment." *Total Audio - Visual, supra, quoting Board of Educ. of Montgmery County v. Payner,* 303 Md. 22, 29, 491 A.2d 1186, 1189-90 (1985).

The Board's current interpretation of *Total Audio - Visual* , read in conjunction with the *Plein* decision, finds that voluntarily quitting one's job for purely economic reasons is neither "necessitous" nor "compelling" under Section 8-1001. To the extent that this interpretation is inconsistent with Gagne v. Potomac Talking Book Services, Inc., 374-BH-03, the Board overruled its prior precedent decision in *Gaskins v. UPS*, 1686-BR-00.

There must be a showing of something more connected with the conditions of the prior employment which motivated the claimant to quit his or her job to better employment to constitute a valid circumstance within the meaning of Section 8-1001. The Court of Appeals has stated, "Accepting more money and changing jobs is as much of a gamble and thus, as much of a personal matter as going in to business for oneself. In [the Court of Appeals'] view, it is unmistakably clear that Section 8-1001(a) was

not designed to provide benefits when the precipitating cause for the voluntary leaving of employment was for higher pay or a better job. Instead, it was designed to prevent hardship to persons who lose their job "through no fault of their own." *Plein v. DLLR*, 369 Md. 421 (2002), *quoting Total Audio - Visual.*

In *Plein, supra,* the claimant was employed by Atlas Tile & Terrazo as a tile setter's helper at a job paying $9.00 per hour. He accepted employment with Home Depot, U.S.A. as a sales associate in the floor and wall department. The Home Depot job paid $12.00 per hour with the prospect of receiving, after a waiting person, a health insurance plan and stock purchase options and, after one year, two weeks vacation and sick leave. The claimant left his employment with Atlas and began working at Home Depot on August 14, 2000. On September 27, 2000, the claimant was laid off through no fault of his own. The Courts of Appeals found that the claimant was not entitled to unemployment benefits under the "necessitous or compelling" test of Section 8-1001 under its interpretation and under the authority of *Total Audio - Visual,* 360 Md. 387, 400-01, 758, A.2d 124, 131-32 (2000).

The Court explained in *Plein,* "In Total Audio-Visual, this Court, albeit, and perhaps significantly so, a sharply divided one, determined, and held that the General Assembly did not intend that a person who voluntarily terminates his or her otherwise satisfactory employment for other employment with better pay be eligible to receive unemployment benefits when laid off through no fault of his or her own by the subsequent employer."

The Board has held, however, that when quitting a job that does not offer health benefits to accept a job that has health benefits may be for valid circumstances within the meaning of *§ 8-1001. Lester W. Davis, Jr. v. Daniel G. Schuster, LLC, 438-BH-03.* The need to look for and accept employment that offer health care benefits is not solely economic. *Id.* There is a large segment of the American population that lacks health care benefits which is creating a serious nationwide health care crisis. *Id.* The need for individuals to have health benefits is a health concern as well as an economic concern. *Id.* Given the high cost of medical care today, the claimant's quitting one job that offered no health benefits for a job that offered health benefits was both of such a "necessitous" and "compelling" nature that the claimant had no reasonable alternative other than leaving employment. *Id.*

In the instant case, the claimant testified that she quit her job for three reasons, not the least of which her new position offered her health care benefits which the employer did not. Pursuant to *Lester W. Davis, Jr. v. Daniel G. Schuster, LLC, 438-BH-03*, the Board finds that the claimant's voluntary quit was for valid circumstances.

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 her burden of demonstrating that she quit this employment for good cause within the meaning of *§8-1001.* However the claimant has established that she had valid circumstances for quitting. A (9) nine week disqualification shall be imposed from the week beginning July 31, 2011.

The decision shall be reversed for the reasons state herein.

**The employer, provided that the employer has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Empl. Art., §8-616, et seq.,* should note that 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 July 31, 2011 and the nine weeks immediately following.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr., Associate Member

KJK
Copies mailed to:
KAREN GRAVES
BOARD OF EDUCATION OF BALTO CO
JAMES A. STULLER
BOARD OF EDUCATION OF BALTO CO
Susan Bass, Office of the Assistant Secretary

# *UNEMPLOYMENT INSURANCE APPEALS DECISION*

KAREN GRAVES

**SSN #**

**Claimant**

vs.

BOARD OF EDUCATION OF BALTO CO

**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: 1140872
Appellant: Claimant
Local Office : 63 / CUMBERLAND CLAIM CENTER

December 20, 2011

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, JAMES A. STULLER, JOHNNY JACKSON

**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, Karen Graves, began working for this employer, Board of Education of Baltimore County, on or about January 3, 2011. At the time of separation, the claimant was working as a special education assistant. The claimant last worked for the employer on June 16, 2011, before quitting.

The claimant quit her position with the employer to accept another full-time position primarily because it offered her $1.00 more per hour in pay. The new position was also slightly closer to her home, but not by a significant amount. The new job was one half hour closer to her home. The claimant gave the employer two weeks of notice and resigned.

## 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.

## 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 her 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 claimant acknowledged that she left her job with the employer, primarily, for slightly better pay with a new employer. The claimant offered testimony that the new job was also slightly closer to her home, by approximately one half hour. However, this is found to not be a significant difference to justify a finding of good cause or valid circumstances.

As the claimant's reason for resignation was not directly attributable to the conditions of the workplace, a finding of good cause is not warranted. Furthermore, because the claimant's reason for resignation was not necessitous and compelling (See Total Audio-Visual Systems Inc., *supra*), a finding of valid circumstances is not warranted either.

## 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 July 31, 2011 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.

*H Abromson*

H Abromson, 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 January 04, 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: December 05, 2011
DW/Specialist ID: WCU42
Seq No: 002
Copies mailed on December 20, 2011 to:
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LOCAL OFFICE #63
JAMES A. STULLER
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