

**- DECISION -**

Claimant:  
AIRELL M ZIMMERMAN

Decision No.: 1082-BR-14

Date: May 7, 2014

Appeal No.: 1400616

S.S. No.:

Employer:  
FEDERAL WORKING GROUP INC

L.O. No.: 65

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 6, 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 two part time jobs. One job, as an information specialist was for 20 hours per two week period. The claimant's hours increased to 46 hours per pay period every two weeks. This job was then decreased to twenty hours per pay period

At the time of the reduction of the claimant's hours from the first job, the claimant's second employer offered the claimant a permanent thirty hour per week position as a

billing and payroll secretary working from her home as well as providing health and dental benefits which were not offered through her first part time position. The claimant quit her position as an information specialist and accepted the position as a billing payroll clerk.

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 Board has held 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.*

The weight of the credible evidence established that the claimant quit her part time job to accept a permanent thirty hour work week wherein she could work from home and secure health and dental insurance.

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 her burden of demonstrating that she quit for valid circumstances within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1001*. The decision of the hearing examiner shall be reversed for the reasons stated herein.

**DECISION**

It is held that the claimant voluntarily quit, but for valid circumstances 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 FEDERAL WORKING GROUP INC.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

AIRELL M. ZIMMERMAN

FEDERAL WORKING GROUP INC

Susan Bass, Office of the Assistant Secretary

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

AIRELL M ZIMMERMAN

SSN #

**Claimant**

vs.

FEDERAL WORKING GROUP 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: 1400616

Appellant: Claimant

Local Office : 65 / SALISBURY  
CLAIM CENTER

February 06, 2014

**For the Claimant:** PRESENT, JOSEPH MAZER

**For the Employer:** PRESENT, KRISTEN CHEVALIER

**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 Airell Zimmerman, worked for Federal Working Group from November 26, 2012, through April 5, 2013. The claimant earned \$11.00 per hour while working part time as an information specialist.

The claimant was hired in a part time, 20 hour per week position. The employer then began offering the claimant more than 20 hours, which she accepted. The claimant was offered another job with TV General Contracting, also working part time. She began working both jobs as of February 16, 2013. The claimant's hours began to be cut by Federal Working Group in March of 2013. She was cut from 46 hours per pay, to 40 hours per pay. Her last paycheck was for 20 hours for the last week of work. The claimant quit her position to work more hours with TV General Contracting.

## 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.

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. However, a finding of valid circumstances may be 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 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 presented at the hearing 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 evidence further shows that the claimant quit to take a new job. Under the Total Audio-Visual Systems, Inc., cited above, such a reason can never qualify as good cause. Further, valid circumstances can only be found in the narrowly defined instances indicated above. Namely, the claimant's stated reasons for taking the new position failed to show that the taking of the new position was of such a necessitous and compelling nature that the claimant had no reasonable alternative other than leaving the employment. In this case, the claimant has failed to prove that the criteria of Total Audio-Visual Systems, Inc. has been met.

## 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 March 31, 2013, 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 Examiner is affirmed.



M. Franceschini, 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 February 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: January 31, 2014  
CEH/Specialist ID: USB7X  
Seq No: 003  
Copies mailed on February 06, 2014 to:

AIRELL M. ZIMMERMAN  
FEDERAL WORKING GROUP INC  
LOCAL OFFICE #65