

- DECISION -

Claimant:
ZIAD AUNALLAH

Decision No.: 1188-BR-14

Date: May 14, 2014

Appeal No.: 1338022

Employer:
INSIGHT GLOBAL INC

S.S. No.: 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.

- 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 13, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the first paragraph of the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant accepted this contract position believing he would become part of the employer's permanent staff rather soon. The claimant also thought he would be eligible for at least annual pay increases. With no notice or discussion, the claimant's contract of employment was extended without a pay increase. The claimant asked the employer about this, but the employer refused to discuss the matter further.

Contract employees have very limited benefits while permanent employees have a full benefit package.

The claimant, at the time he was hired, also mistakenly believed that he would be reimbursed for parking. The claimant was quite surprised when he learned, right after starting this employment, that he was responsible for the \$8 to \$10 per day in parking fees.

The claimant decided that the lack of consideration of his status as a contractor, the denial of pay increase after more than a year of service, the refusal of the employer to discuss future pay increases, and the additional parking expense everyday, rendered this employment unsatisfactory. The claimant concluded his compensation was below industry standards. He was also displeased with his supervisor and he found him demanding and difficult.

The claimant's contract of employment included a non-compete clause. He could not seek alternative employment while he was under contract with this employer. The claimant works in a fairly confined industry where employers and workers are known to each other. To enable the claimant to find more suitable and more remunerative employment, he voluntarily quit his position.

The Board concludes 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)*.

"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.

In his appeal, the claimant offers several specific contentions of error as to the findings of fact and the conclusions of law in the hearing examiner's decision. He disputes the dismissive tone of the hearing examiner's findings of fact and notes errors and omissions in the written facts compared to his testimony. The claimant also reiterates that testimony. Because the Board generally agrees with the claimant's contentions, the Board will not discuss them in great detail here.

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 necessary elements of due process were observed throughout the hearing. The Board finds no reason to

order a new hearing or take additional evidence in this matter. Sufficient evidence exists in the hearing record from which a decision may be made.

The Board has thoroughly reviewed the record from the hearing but disagrees with the hearing examiner's findings of fact and conclusions of law. The Board finds the claimant was compelled to quit when, by virtue of the non-compete clause, he could not seek other employment while remaining employed. The claimant tried to explore alternatives to not receiving a pay increase and not being consulted on his contract extension, but was rebuffed. The claimant believed the employer would compensate him for his parking fees, but learned only after starting this employment that they would not.

The Board finds that the employer created a situation wherein the claimant had no reasonable alternative when he left. The employer had denied the claimant a pay increase after extending his contract without benefit of discussion or negotiation. The employer had refused to discuss the matter further and foreclosed the claimant's opportunity to obtain a benefit package. These perceived problems were the impetus for the claimant seeking other employment. The employer's non-compete clause rendered a work search concurrent with this employment impossible. Leaving this employment to pursue other opportunities was the only option left to the claimant at this point.

The evidence tends to show that the position the claimant accepted and worked was not the position he believed he had acquired. This motivated the claimant to seek other employment. The Board does not find that the claimant should be punished for trying to stay for more than a year. The only reason the claimant quit, when he did, was that the employer required it in order for him to seek other position and not be in breach of his employment contract. The Board concludes that the claimant had good cause for leaving his employment under these 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 met his burden of demonstrating that he quit this employment for good cause within the meaning of §8-1001 for quitting this employment. The decision shall be reversed for the reasons stated herein.

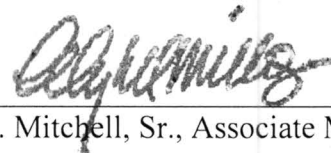
DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, with good cause, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. The claimant is entitled to benefits for the weeks claimed if he is otherwise eligible.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

ZIAD AUNALLAH

INSIGHT GLOBAL INC

INSIGHT GLOBAL INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ZIAD AUNALLAH

SSN #

Claimant

Vs.

INSIGHT GLOBAL 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: 1338022

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

February 28, 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).

FINDINGS OF FACT

The claimant, Ziah Aunallah, began working for this employer, Insight Global Inc., about August 2012. At the time of separation, the claimant was working as a full-time Energy Trader Support Technician, earning \$25.00 per hour. The claimant last worked for the employer on November 29, 2013, before quitting under the following circumstances:

The claimant quit his position after the employer extended his contract without a pay increase. The claimant believed that he was working for less than he deserved. He realized that the employer was not going to increase his pay. The claimant's supervisor was upset when he asked off and the claimant was not happy in the position. The claimant also had to pay for parking every day, which became expensive. The claimant had to quit his position due to the employer's non-compete agreement in order for him to find another position.

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.

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 this case, this burden has not been met.

The claimant detailed his misgivings about the position, including problems taking off and paying for parking. The claimant paid for parking the entire time he worked for the employer. It is clear that the claimant did not enjoy his position and he did not enjoy his working experience. However, the claimant failed to establish that his quit was for a compelling and necessitous reason. The fact that this was not the claimant's dream job and did not pay him what he felt he deserved is not grounds for good cause or valid circumstances.

It is determined that the claimant has concurrently 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 November 24, 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 Specialist is affirmed.

K. Boettger

K. Boettger, 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 March 17, 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: February 14, 2014
AEH/Specialist ID: WOK2D
Seq No: 001
Copies mailed on February 28, 2014 to:

ZIAD AUNALLAH
INSIGHT GLOBAL INC
LOCAL OFFICE #63