

**DECISION**

Claimant:  
WILLIAM F SEE

Decision No.: 1214-SE-06

Date: June 07, 2006

Appeal No.: 0524540

Employer:  
ACT PERSONNEL SERVICE INC

S.S. No.:

L.O. No.: 64

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: July 07, 2006

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**- APPEARANCES -**

FOR THE CLAIMANT:

WILLIAM F. SEE

FOR THE EMPLOYER:

ACT PERSONNEL SERVICE, Inc.

## EVALUATION OF THE EVIDENCE

The Board has considered all the evidence presented at all hearings, as well as the appeal file of the Department of Labor, Licensing and Regulation. The testimony, exhibits and legal argument presented at the Special Examiner Hearing was sufficiently persuasive and compelling to reverse the prior decision of the Hearing Examiner.

## FINDINGS OF FACT

The claimant was employed by ACT Personnel Service Inc., a temporary staffing agency. The claimant's assignment was to Schroeder Industries as a full-time production worker at the rate of pay of \$6.50 per hour. The claimant had been working intermittently through this temporary agency since April, 2003. The assignment with Schroeder had begun on February 15, 2005 and ended on February 25, 2005 when the claimant accepted work through his union.

The claimant was primarily a construction worker who obtained work through Iron Workers Union, Local 568. He has been a pension contributor since 1989. Each time the claimant works at his usual trade through the union, his retirement is augmented or "paid into". Further, acceptance of job offers from the Union is necessary to insure continued calls from the union hall for further employment. When the claimant did not have union work at his regular trade, he accepted temporary placements through ACT Personnel. In this case, the extreme increase of hourly pay, from \$6.50 to \$24.50, is not controlling. Moreover, the claimant establishes valid circumstances in establishing that his primary trade is a union construction worker, that he has a vested interest in adding to the retirement/pension fund to which he has been a member for over 25 years and establishing the means of getting future calls to work by the union by continually accepting assignments.

It was unacceptable for the claimant to depart from ACT without notice and the employer made this known at the hearings. However, the employer may find satisfaction in that this temporary employer's account will not be charged in this instance pursuant to the Maryland Unemployment Insurance Law, Section 8-611(e)(1).

## CONCLUSIONS OF LAW

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 serious, 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.

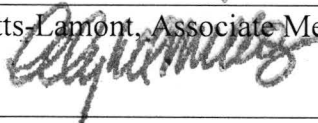
**DECISION**

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. He is disqualified from receiving benefits from the week beginning February 20, 2005 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Associate Member



Clayton A. Mitchell, Sr., Associate Member

RD

Date of hearing: May 10, 2006

Copies mailed to:

WILLIAM F. SEE

ACT PERSONNEL SERVICE INC

Michael Taylor, Agency Representative

## **UNEMPLOYMENT INSURANCE APPEALS DECISION**

WILLIAM F SEE

SSN #

**Claimant**

vs.

ACT PERSONNEL SERVICE 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: 0524540

Appellant: Claimant

Local Office : 64 / BALTOMETRO  
CALL CENTER

January 13, 2006

**For the Claimant :** PRESENT

**For the Employer :** PRESENT , CHARLENE LENNOX

**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 was employed as a production worker on assignment with ACT Personnel Service, Inc., a temporary staffing agency. The claimant had been employed on an intermittent basis with this agency since April 2003. The final assignment, with Schroeder Industries, started on February 15, 2005, and concluded on February 25, 2005, because the claimant stopped showing up for work after that date.

The claimant is a member of the Iron Workers Local Union, and decided to accept a job through the union which was to begin on or about February 26, 2005. That job was to have paid the claimant \$24.50 per hour, even though the duration of the position was only approximately seven days. The claimant was not guaranteed any employment beyond those seven days, nor was he promised any further employment

through the union as an incentive for accepting the union job. The claimant simply left his position with ACT Personnel without notification to that agency, to accept another job.

### 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 or compelling nature that the individual had no reasonable alternative other than leaving the employment." Gaskins v. UPS, 1686-BR-00.

### EVALUATION OF EVIDENCE

A claimant who resigns is ineligible for benefits unless it is established, by a preponderance of the evidence, that this resignation was for good cause or valid circumstances. In the case at bar, this burden has not been met.

The claimant has not demonstrated that he had either good cause or valid circumstances for her resignation from employment with ACT Personnel Service. While in some instances, an individual who resigns from temporary employment to return to full-time, permanent employment in their customary field can demonstrate valid circumstances for a resignation under the Maryland Unemployment Insurance Law, that is not evident here. The claimant accepted a short-term, temporary assignment through his union which lasted only a few days. There has no guarantee of further assignments or jobs through the union, nor was there any guarantee of a permanent position. In essence, the claimant left one temporary assignment for another, even though the other assignment was substantially higher paying. One other argument made by the claimant during the hearing was that he was compelled to accept the job through the union to protect his union membership. The claimant has not explained in detail how the offer of a seven day assignment through the union in any way protected his standing with his local union.

Finding no basis under Section 8-1001 of the Maryland Unemployment Insurance Law to avoid disqualification of the claimant's eligibility from receiving unemployment benefits, the benefit determination in this case will not be modified.

### 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 February 20, 2005 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.

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R D Albert, 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 the overpayment within 30 days from the date the overpayment is established. This request may be made by contacting Overpayment Recoveries Unit at 410-949-0022 or 1-800-827-4839. 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.**

### **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 30, 2006. 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

**NOTE:** Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: January 03, 2006

DW/Specialist ID: RBA3A

Seq No: 001

Copies mailed on January 13, 2006 to:  
WILLIAM F. SEE  
ACT PERSONNEL SERVICE INC  
LOCAL OFFICE #64