

- DECISION -

Claimant:
BRUCE D GRIFFITH

Decision No.: 1258-BR-01

Date: July 02, 2001

Appeal No.: 0107784

Employer:
LEONARDTOWN FORD INC

S.S. No.:

L.O. No.: 61

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: August 01, 2001

REVIEW ON THE RECORD

Upon review of the record in this case, the Board adopts the findings of fact of the hearing examiner but reaches a different conclusion of law.

When the claimant quit his job with the employer in the instant case his compensation was as follows:

1. \$8.00 per hour / 40 hour work week
2. 4 paid holidays

After a period of **one year** the claimant may have been eligible for 1 week of vacation and 3 sick days. Being vested in benefits was also conditional upon job performance. At the time of the claimant's separation from employment he was not eligible to receive these additional benefits.

When the claimant accepted the bona fide offer of employment from Aaron's Rental his compensation was as follows:

1. \$9.50 per hour / 50 hour work week
2. vacation pay accrues after 90 days

After a period of **six months** the claimant would be eligible for vacation pay, holiday pay, and medical benefits. Because of reasons not relevant to the case at bar, the claimant was discharged from his new employment after two weeks.

Pursuant to the Board precedent case, *Gaskins v. United Parcel Service*, 1686-BR-00, a finding of valid circumstances might exist when a claimant quits his job to accept better employment. *Gaskins*, supra, must be applied in light of the legislative policy codified in Maryland Labor & Employment Article Section 8-102. See also *Sinai Hospital v. Dept. of Employment and Training*, 309 Md. 28 (1987)(unemployment compensation laws should be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed). Therefore, the Board shall interpret the "necessitous or compelling" test of Section 8-1001(c)(ii) in liberally favor of coverage and strictly construing it for the purposes of disqualifying the claimant from benefits pursuant to the legislative command of Section 8-102.

In the instant case, the claimant left a job for another paying 16% more (per hour *not including* overtime). The claimant had the ability to be vested in similar benefits with Aaron Rental as his previous employer within 6 months and vacation days after 90 days. The commuting distance was also substantially less. The commute to Leonardtown Ford was 28 miles per day while the commute to Aaron's was 4 miles per day —about 85% less miles.

The employer offered the claimant fifty cents more per hour before the claimant quit. The claimant counter-offered by asking the employer if it could match Aaron Rental's offer. The fact that Leonardtown Ford could not match Aaron Rental's offer "at that time" is strong indicia that the claimant accepted better employment.

Therefore, the Board finds that based upon a preponderance of the circumstances and when viewed in light of Section 8-102, the claimant's reasons for quitting his job were of such a compelling nature that the claimant had no other alternative but to leave his employment.

The decision of the hearing examiner shall be reversed.

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 March 11, 2001 and the four weeks immediately following.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member

Hazel A. Warnick, Chairperson

Copies mailed to:
BRUCE D. GRIFFITH
LEONARDTOWN FORD INC
FREDERICK N. MATTIS
BUSSLERS FORD
Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

BRUCE D GRIFFITH

SSN #

Claimant

vs.

LEONARDTOWN FORD 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: 0107784

Appellant: Claimant

Local Office : 61 / COLLEGE PARK
CLAIM CENTER

May 25, 2001

For the Claimant : PRESENT

For the Employer : PRESENT , FREDERICK N. MATTIS, MICHAEL C. SERPILO

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 filed his original claim through the College Park Claim Center with an effective date of April 1, 2001. His weekly benefit amount was determined to be \$218.00.

The claimant worked at Leonardtown Ford, Inc., from May 13, 2000 to March 14, 2001, as the Supervisor of Porters. He was earning \$8.00 per hour, and he was required to work 40 hours per week.

The claimant voluntarily quit his job. The claimant alleged quitting to accept a better job.

At the time of the claimant's voluntary separation from this employer, he was receiving medical benefits

through the employer. At the hearing, the claimant could not remember what percentage of his medical benefits were paid by the employer and what percentage that he paid. Prior to his voluntary separation, the claimant was entitled to four days of holiday pay. After one year of employment at this employer, the claimant would have qualified for vacation pay, and three days of sick pay benefits. Prior to his voluntary quit, the claimant received no benefits, nor was he enrolled in any pension plan.

After giving the employer four day's notice of quitting, the claimant left his job at Leonardtown Ford, Inc. to accept a full-time position at Aaron's Rental, in Lexington Park, Maryland. The claimant's position was that of an Accounting Advisor. He was earning \$9.50 per hour, and he was required to work 50 hours per week. At the time of his hire, the claimant was not entitled to any benefits at the employer. After working six months at the employer, the claimant would have qualified for the following benefits: Vacation pay, holiday pay and medical benefits. After two weeks of employment, the claimant was terminated from this job. Because of what the employer's motor vehicle insurance carrier considered to be a problem with the claimant's motor vehicle driving record, the insurance carrier would not permit the claimant to be included under its coverage.

At Aaron's Rental, the claimant's job consisted of calling delinquent customers; and requesting that they pay their bill within a certain time frame. If this bill was not paid as requested, the claimant was then to drive to the customer's office and/or residence and repossess the items which the customer had rented.

The claimant voluntarily quit his job at Leonardtown, Ford, Inc. to accept a position at Aaron's Rental for more money and for possible advancement within the new company.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996) 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 claimant had the burden to show, by a preponderance of the evidence, that he left his position for a good cause or valid circumstances. Prior to August 25, 2000, the case of Baywood v. R.M.R. Corporation, 408-BR-82, was controlling. In that case if a claimant left a position for another position where the salary was substantially higher at the second job and where the employment offered was in the same field and where the job offer was definite and bona fide with the work being at least as stable and permanent, good cause could be found pursuant to Section 8-1001. However, the Board of Appeals in the case of Gaskins v. United Parcel Service, 1686-BR-00, overrode the Baywood decision and found that leaving a job for a better job is not good cause under Section 8-1001. However, the Board did leave open the question of whether valid circumstances might exist. The Board found that a claimant needed to show that the acceptance of the new job was "of such necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment." I find that the claimant in this case has not

provided sufficient testimony to meet that test. Leaving his job at Leonardtown Ford, Inc. for more money and possible advancement within Aaron's Rental, accordingly, I find that the claimant has not provided sufficient evidence to show that he voluntarily left his position for good cause or valid circumstances.

Therefore, the determination of the Claim Specialist will be affirmed.

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 (Supp. 1996). Benefits are denied for the week beginning March 11, 2001 and until the claimant becomes re-employed 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 Claim Specialist is affirmed.

M R Wolf, 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 410-949-0022 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 June 11, 2001. 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 : May 15,2001

DW/Specialist ID: WCP4H

Seq No: 004

Copies mailed on May 25, 2001 to:

BRUCE D. GRIFFITH

LEONARDTOWN FORD INC

LOCAL OFFICE #61

FREDERICK N. MATTIS

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