-DECISION-

Claimant:
DIANNE K FAULSTICH

Employer:
ARTCRAFT COLLECTION INC

Decision No.: 1594-BH-12

Date: March 19, 2012

Appeal No.: 1129810

S.S. No.:

L.O. No.: 63

Appellant: Employer

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Maryland Code, Labor and Employment Article, Title 8 Section 903.

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 1002-1002.1 (Gross/Aggravated Misconduct connected with the work), 1003 (Misconduct connected with the work) or 1001 (Voluntary Quit for good cause).

- 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: April 18, 2012

- APPEARANCES -

FOR THE CLAIMANT:

DIANNE K. FAULSTICH

FOR THE EMPLOYER:

DONNA WILNER, Vice President

EVALUATION OF THE EVIDENCE

The Board of Appeals (Board) has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's (Agency) documents in the appeal file.

On January 24, 2012, pursuant to Notices of Hearing issued on January 3, 2012, the Board held a hearing on the issues of the claimant's availability for work for the weeks ending October 9, 2010 through November 13, 2010, and the issue of the nature of the claimant's separation, if any, from this employment. The claimant and the employer appeared and testified under oath. The Agency did not participate in the hearing.

FINDINGS OF FACT

The claimant has worked for this employer for many years. She always worked a part-time schedule. In the recent past, the claimant worked 8 hours each weekend.

The claimant's husband became critically ill and his condition worsened. The claimant advised the employer and was allowed to take whatever time off from work that she needed to help care for her husband. The claimant maintained contact with the employer. The claimant and the employer both anticipated that the claimant would return to her position in the future.

The claimant's husband passed away on November 3, 2010. About two and one-half weeks later, the claimant returned to her previous work schedule with this employer.

The claimant was not available for employment and was not seeking employment.

CONCLUSIONS OF LAW

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 claimant has the burden of demonstrating by a preponderance of the evidence that he is able, available and actively seeking work. *Md. Code Ann., Lab. & Empl. Art., § 8-903.* A claimant may not impose conditions and limitations on his willingness to work and still be available as the statute requires. *Robinson v. Md. Empl. Sec. Bd, 202 Md. 515, 519 (1953).* A denial of unemployment insurance benefits is warranted if the evidence supports a finding that the claimant was unavailable for work. *Md. Empl. Sec. Bd. v. Poorbaugh, 195 Md. 197, 198 (1950); compare Laurel Racing Ass'n Ltd. P'shp v. Babendreier, 146 Md. App. 1, 21 (2002).*

A claimant should actively seek work in those fields in which he is most likely to obtain employment. *Goldman v. Allen's Auto Supply, 1123-BR-82; also see and compare Laurel Racing Ass'n Ltd. P'shp v. Babendreier, 146 Md. App. 1 (2002).*

The term "available for work" as used in *§ 8-903* means, among other things, a general willingness to work demonstrated by an active and reasonable search to obtain work. *Plaugher v. Preston Trucking, 279-BH-84.* A claimant need not make herself available to a specific employer, particularly when the employer cannot guarantee her work, in order to be available as the statute requires. *Laurel Racing Ass'n Ltd. P'shp v. Babendreier, 146 Md. App. 1, 22 (2002).*

Section 8-903 provides that a claimant must be able to work, available to work, and actively seeking work in each week for which benefits are claimed.

The claimant maintained that she did not quit her employment. The claimant needed time off work to help care for her husband, to be with her husband, and after he passed, to mourn her husband. The employer completely understood and willingly allowed the claimant to miss as much work as she needed. Both parties fully expected the claimant to return to work at some future date. In essence, and from a practical standpoint, the claimant was on an extended, indefinite leave-of-absence. Because the claimant did not work and did not have any earnings during this period, she was unemployed. Because she was unemployed by virtue of her leave-of-absence, the claimant caused this period of unemployment. Because the claimant initiated the absence, her unemployment is treated as a quit and is analyzed under the section of the law which concerns voluntary separations, or quits. *See Sortino v. Western Auto Supply Co., 896-BH-83.*

The claimant had a period of unemployment during which she filed a claim for benefits. The claimant was well within her rights to have done this. However, two factors must be addressed to determine

whether the claimant was entitled to benefits. The first of these is whether the reason for the claimant's unemployment was disqualifying.

As stated above, the Board finds this period of unemployment should be analyzed as a quit. The undisputed evidence showed that the claimant left this employment, however briefly, for a compelling, but personal reason. The claimant's husband was quite ill and she was his primary care-taker. Because this cannot be found to be work-related, the claimant's leaving cannot be for good cause. However, because this was for such a personally compelling and necessitous reason, the Board finds that the claimant had valid circumstances for this period of unemployment. The claimant is assessed a five-week benefit disqualification after which she would be qualified to receive benefits.

The second factor to be considered is whether the claimant is eligible for benefits by virtue of meeting the various Agency requirements. One of those requirements is that a claimant must be available for work. Both the claims examiner and hearing examiner found that the claimant had a necessitous and personally compelling reason for being unavailable for work, and held that she met the eligibility provisions. The Board does not read *§8-903* to include such an exception to the availability requirements.

The claimant was not available for work. If she had been available for work, she had a job to which she could have gone. The employer still had the claimant's position available for her. That the claimant did not work, albeit for very good reasons, clearly established her unavailability for work. There was no evidence that the claimant would have worked at all during this period for any employer or for any reason. The claimant did not want to work and had no intention of working during this six week period. A claimant who is not willing to work, is not available for work, regardless of why they have chosen to not work. Consequently, the claimant was not eligible for benefits.

In order for a claimant to receive benefits, the claimant must be both qualified and eligible. Here, the claimant was qualified, but not eligible. She is not entitled to benefits for any of the weeks claimed between October 3, 2010 and November 13, 2010.

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.

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).*

The Board finds based upon a preponderance of the credible evidence that the claimant did not meet her burden of demonstrating that she was able, available, and actively seeking work, from October 3, 2010

through November 13, 2010, within the meaning of *Robinson v. Md. Empl. Sec. Bd., 202 Md. 515 (1953)* and *§8-903*. The hearing examiner's decision shall be reversed for the reasons stated herein.

DECISION

The claimant is not able to work, available for work and actively seeking work within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 903. The claimant is disqualified from receiving benefits from the week beginning October 3, 2010 and until the claimant is meeting the requirements of the law.

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 October 3, 2010 and the four weeks immediately following.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr., Associate Member

Eileen M. Rehrmann, Associate Member

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.

RD
Date of hearing: January 24, 2012
Copies mailed to:
DIANNE K. FAULSTICH
ARTCRAFT COLLECTION INC
SUSAN BASS DLLR
ARTCRAFT COLLECTION INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

DIANNE K FAULSTICH

SSN #

Claimant

vs.

ARTCRAFT COLLECTION 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: 1129810
Appellant: Employer
Local Office : 63 / CUMBERLAND CLAIM CENTER

September 16, 2011

For the Claimant: PRESENT

For the Employer: PRESENT , DONNA WILNER

For the Agency:

ISSUE(S)

Whether the claimant is able, available for work and actively seeking work within the meaning of the MD Code Annotated, Labor and Employment Article, Title 8 Sections 903 and 904; and/or whether the claimant is entitled to sick claim benefits within the meaning of Section 8-907.

FINDINGS OF FACT

The claimant, Dianne Faulstich, filed a claim for unemployment insurance benefits, establishing a benefit year effective February 9, 2010 with a weekly benefit amount of $70. The Claims Specialist allowed benefits during the week ending October 23, 2010 because the claimant missed one (1) day of work due to a compelling and necessitous nature. The employer, Artcraft Collection Inc., filed a timely appeal.

The claimant missed one (1) day of work to take time off because her husband was admitted into the Intensive care unit of the hospital. She has no restrictions on her availability for work.

CONCLUSIONS OF LAW

Md. Code Ann., Labor of Emp. Article, Section 8-903 provides that a claimant for unemployment insurance benefits shall be (1) able to work; (2) available for work; and (3) actively seeking work. In Robinson v. Maryland Employment Sec. Bd., 202 Md. 515, 97 A.2d 300 (1953), the Court of Appeals held that a claimant may not impose restrictions upon his or her willingness to work and still be available as the statute requires.

EVALUATION OF THE EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence he was able to work, available for work and actively seeking work, during the period in question, as defined by Maryland Unemployment Insurance Law. In the case at bar, the claimant met this burden.

In Williams, 901-BR-83, the Board held "A disqualification under Section 8-903 is inappropriate where the claimant is available for work during the normal work week and is unavailable for weekend work only...." The deciding factor is the duration of the unavailability, not the reason for the unavailability.

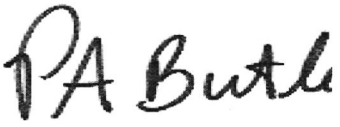
Applying the Williams' logic to the case at bar yields a similar result: the claimant's unavailability is not a significant period of unavailability to render the claimant ineligible to receive unemployment insurance benefits.

Accordingly, I hold the claimant met her burden in this case and was able to work, available for work and actively seeking work, during the period in question, as defined by Maryland Unemployment Insurance Law and, provided the claimant meets all other eligibility requirements, benefits are allowed.

DECISION

IT IS HELD THAT the claimant is able, available and actively seeking work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-903. Benefits are allowed during the week ending October 23, 2010, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is affirmed.



P A Butler, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

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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 October 03, 2011. 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 : September 15,2011
CH/Specialist ID: WCU1J
Seq No: 002
Copies mailed on September 16, 2011 to:
DIANNE K. FAULSTICH
ARTCRAFT COLLECTION INC
LOCAL OFFICE #63
SUSAN BASS DLLR
ARTCRAFT COLLECTION INC