

**- DECISION -**

Claimant:	Decision No.:	1598-BR-14
CONSTANTINE A COLOCCIA	Date:	July 9, 2014
	Appeal No.:	1316806
Employer:	S.S. No.:	
BENFIELD ELECTR CO INC	L.O. No.:	63
	Appellant:	CLAIMANT - REMAND FROM COURT

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: August 8, 2014

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**PROCEDURAL HISTORY**

On October 2, 2013, the Board of Appeals denied the claimant's request for a review of a decision concerning his claim for unemployment insurance benefits. On November 1, 2013, the claimant appealed the decision of the Board of Appeals to the Circuit Court for Baltimore County. On March 10, 2014, the Board of Appeals filed a *Motion For Remand* with the Court.

On April 17, 2014, the Circuit Court for Baltimore County remanded the claimant's appeal to the Board of Appeals, Department of Labor, Licensing and Regulation to review and consider the medical documentation submitted to Board by the claimant.

**FINDINGS OF FACT**

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)*.

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

The Board adopts the following findings of fact and conclusions of law:

The claimant worked as a full-time electrician from August 10, 1993 until May 1, 2013, earning \$20.00 an hour.

The claimant voluntarily resigned his job to relocate to New Jersey to care for his brother who had advanced dementia and who lived in an assisted living home. The claimant's sister had cancer and it had become difficult for her to take care of him by herself. The claimant's brother had no other family members to help provide care for his brother. The distance was too great for the claimant to commute back and forth on a daily basis.

The hearing examiner offered the claimant the opportunity to provide medical documentation of his brother's condition to support the claimant's testimony.

The claimant faxed his brother's death certificate to the hearing examiner on June 26, 2013 showing that the claimant's brother had died five weeks after the claimant moved back to New Jersey. The death certificate attested to the fact that the cause of the claimant's brother's death, which occurred on June 8, 2013, was vascular dementia.<sup>1</sup> For unknown reasons, the documentation did not reach the hearing examiner.

"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

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<sup>1</sup> Board Of Appeals, Claimant's Exhibit B2

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.

At the Lower Appeals hearing, the claimant had asserted that he had medical documentation that his brother was suffering from dementia. The claimant was instructed by the hearing examiner to fax the documentation to him by July 5, 2013. The claimant sent the documentation to the proper fax number and received confirmation that the fax was transmitted successfully on June 26, 2013.

For unknown reasons, the hearing examiner did not receive the claimant's timely documentation. Subsequently, the Circuit Court for Baltimore County directed that the Board review and consider the medical documentation provided to them by the claimant in his appeal letter. Therefore, the Board has entered the letter from the claimant to the Board, dated July 18, 2013 as Board of Appeals, *Claimant's Exhibit B1*; the accompanying Certificate of Death from the New Jersey Department of Health as Board Of Appeals, *Claimant's Exhibit B2*; and, the Transmission Verification Report, dated June 28, 2013 as Board of Appeals, *Claimant's Exhibit B3*.

The weight of the credible evidence established that the claimant quit his job for a necessitous and compelling reason when he quit his job to provide care for his dying brother.

The Board finds based on a preponderance of the credible evidence that the claimant met his burden of demonstrating that he quit for valid circumstances within the meaning of *Maryland Annotated, Labor & Employment Article, § 8-1001*. The hearing examiner's decision shall be reversed for the reasons stated herein.

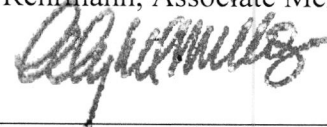
### DECISION

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. The claimant is disqualified from receiving benefits from the week beginning April 28, 2013 and the four weeks immediately following.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

CONSTANTINE A. COLOCCIA

BENFIELD ELECTR CO INC  
D. H. ANDREAS M. LUNDSTEDT ESQ.  
CURTIS C. COON ESQ.  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

CONSTANTINE A COLOCCIA

SSN #

**Claimant**

Vs.

BENFIELD ELECTR CO 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: 1316806

Appellant: Claimant

Local Office : 63 / CUMBERLAND  
CLAIM CENTER

July 12, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, PAULA WARD

**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, Constantine Coloccia, began working for Benfield Electr CO INC on or about August 10, 1993. At the time of separation, the claimant was working full-time as an electrician, making \$20.00 an hour. The claimant last worked for the employer on or about May 1, 2013, before resigning.

The claimant relocated to New Jersey to be closer to his family. Motivating the claimant was the fact that his brother was in the last stages of dementia. The only other family member available is the claimant's sister, who is recovering from cancer. The claimant felt that he had no other option but to resign and relocate to be close to his brother, who ultimately passed away on June 6, 2013.

## 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 she 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 credible testimony and evidence established that the claimant allegedly resigned in order to take care of his brother, who was in the final stages of dementia. If the personal reason for quitting was due to a health problem (either the claimant's health problem or that of another for whom the claimant must care), the claimant has the burden of producing documentary evidence of the health problem from a physician or hospital.

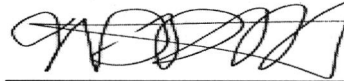
The claimant was afforded the opportunity to provide medical documentation on July 5, 2013 to support his testimony in regard to his brother's condition. The case was held open to allow the claimant to fax in the requisite medical documentation, but none was sent in. Accordingly, the claimant failed to establish that he resigned for good cause or valid circumstances.

## 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 April 28, 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.



W. Rosselli, 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 July 29, 2013. 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: June 26, 2013

AEH/Specialist ID: WCU1Q

Seq No: 001

Copies mailed on July 12, 2013 to:

CONSTANTINE A. COLOCCIA

BENFIELD ELECTR CO INC

LOCAL OFFICE #63