



Maryland

Department of Economic &
Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

- DECISION -

Claimant:
CAROLYN MILES

Decision No.: 1982-BR-93
Date: November 23, 1993

Appeal No.: 9316069

Employer:
PATRIARCH INC.

S.S. No.:

L.O. No.: 01

Appellant: Claimant

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of Section 8-1001 of the Labor and Employment Article.

- 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 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: December 23, 1993

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner.

The Board finds the claimant's testimony credible, and reverses the credibility determination of the Hearing Examiner. The claimant's testimony was uncontradicted, consistent with her previous statement, and consistent with her doctor's report. The primary reason given for the failure to credit the claimant's testimony was a disbelief that the claimant would suffer from her illnesses to the point where she had to quit work, without visiting a doctor prior to quitting. In the context of this case, the Board finds nothing inherently incredible about this scenario.

The claimant has been suffering from fibroid tumors since 1987 and has been advised in the past not to do heavy lifting. She was prescribed iron and multi-vitamins, and she self-prescribed aspirin for the pain. She advised the employer of these medications when she applied for work. Her work became gradually more difficult, including heavier lifting, and her condition deteriorated. She earned \$6.50 an hour as a janitorial assistant and did not have medical insurance. She did not visit a doctor because she felt that she knew what the problem was, and that her best course of action was just to last as long as she could with her own self-medication. She did ask for a one-week leave of absence, and this was granted, but this did not solve the problem. Under all these conditions, a decision to quit work without visiting a physician does not reflect badly on the claimant's credibility.

Since the claimant left work because of a medical condition, the statute requires her to provide evidence of that condition from a physician or a hospital. The claimant did provide such evidence. There is no requirement in the law that the claimant show that a physician advised her to quit her employment, nor that she even visited a physician at any particular time. The claimant's doctor's note clearly establishes that she suffers from the medical condition she testified of, and her testimony clearly establishes that it was the cause of her leaving her employment.

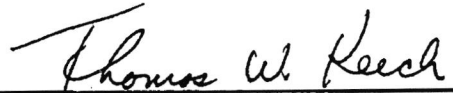
The claimant's reason for leaving employment would be good cause, had she clearly established that the employer had violated a condition of employment in changing the lifting requirements of her job substantially. The claimant, however, did not provide sufficiently detailed evidence to establish this point. Therefore, she does not have good cause.

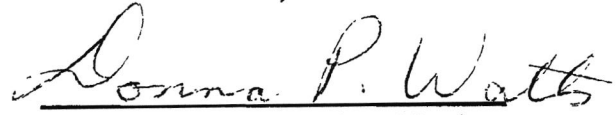
The claimant, however, has shown that she had a "valid circumstance" for leaving the employment within the meaning of Section 8-1001 of the law. The claimant's medical condition was a necessitous and compelling reason which left her no reasonable alternative but to leave the employment. For this reason, a lesser penalty will be imposed, based upon the valid circumstances found.

DECISION

The claimant voluntarily left her employment, without good cause but for valid circumstances within the meaning of Section 8-1001 of the Maryland Unemployment Insurance Law. She is disqualified from the receipt of benefits from the week beginning May 30, 1993 and the four weeks immediately following.

The decision of the Hearing Examiner is modified.


Thomas W. Keech
Thomas W. Keech, Chairman


Donna P. Watts
Donna P. Watts, Associate Member

K:DW

km

Copies mailed to:

CAROLYN MILES

PATRIARCH INC

Unemployment Insurance - #01

UNEMPLOYMENT INSURANCE APPEALS DECISION

CAROLYN MILES

Before the:

SSN #

Claimant

vs.

PATRIARCH INC

Employer/Agency

**Maryland Department of Economic and
Employment Development
Appeals Division**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 333-5040

Appeal Number: 9316069
Appellant: Claimant
Local Office: 01 / Baltimore

September 20, 1993

For the Claimant: PRESENT - GEORGE SUMYERS

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 began employment with Patriarch, Inc. on May 26, 1990. The claimant was employed as a full-time janitorial aide and she earned \$6.50 per hour. The claimant voluntarily quit employment on June 2, 1993. The claimant suffers from fibroid tumors and anemia. The claimant asserts that she quit employment due to internal bleeding and pain caused by her medical condition. The claimant quit employment without seeking treatment for her condition.

The claimant provided medical documentation of her condition in the form of a physician's statement, DEED Form 315. The physician's statement is dated July 21, 1993 and assigned by Henry Kakembo, M.D. Dr. Kekembo first treated the claimant on July 21, 1993, the same day the document was signed.

The claimant asserts that she did not seek treatment before quitting the employment because her physical condition did not allow it. This Hearing Examiner dismisses her testimony for it lacks credibility. The claimant did not see a physician until she was informed by the Office of Unemployment Insurance as she would need medical documentation of her physical condition. This Hearing Examiner finds it hard to believe that someone experiencing severe bleeding and pains would not seek treatment until nearly one and one half months after she allegedly became unable to work due to the condition.

It should be noted that the employer was not present at the hearing.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1001(a) provides that an individual, who otherwise is eligible to receive benefits is disqualified from receiving benefits if the individual's unemployment results from voluntarily leaving work without good cause. Section 1001(b) further provides a cause for voluntarily leaving is good cause if the cause is directly attributable to, arising from, or connected with the conditions of employment or the actions of the employing unit. The facts established in this case, do not demonstrate such good cause under the Law.

A reduced disqualification may be imposed as set forth in the Maryland Code, Labor and Employment Article, Title 8, Section 1001(c). Section 1001(c)(1)(i) provides that a disqualification may be reduced where the voluntarily quit is precipitated by a substantial cause that is directly attributable to, arising from, or connected with the conditions of employment or the actions of the employing unit. Similarly, Section 1001 (c)(1)(ii) allows for a reduced disqualification if the voluntarily quit was precipitated by a cause of such a necessitous or compelling nature that the individual had no reasonable alternative other than leaving the employment.

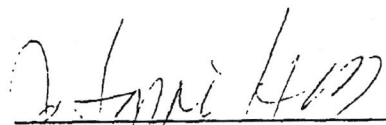
Section 1001 (c)(2) further provides that for determination of the application of Section 1001(c)(1)(i), an individual who leaves employment because of the health of the individual, or another for which the individual must care, the individual must submit a written statement or other documentary evidence of the health problem from a hospital or physician (emphasis added).

In this case, the claimant submitted the required medical documentation, but the documentation has no probative value since the claimant's testimony lacks credibility. The claimant asserts that she voluntarily quit her employment due to severe bleeding and pains cause by fibroid tumors. The claimant did not seek medical attention before she quit employment. In fact, the claimant sought medical attention nearly one and one half months after she quit employment and only after she was informed by the Office of Employment Insurance that she would need medical documentation of her physical condition. The claimant voluntarily quit employment without good cause or a valid circumstance within the meaning of the Maryland Unemployment Insurance Law, Title 8, Section 1001.

DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause or a valid circumstance, within the meaning of Maryland Code, Title 8, Section 1001. Benefits are denied for the week beginning May 30, 1993, and until the claimant becomes re-employed, earns at least fifteen times the claimant's weekly benefit amount in covered employment, and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is affirmed.



J. Sgroi III., ESQ.
Hearing Examiner

Any party may request a review **either in person or by mail** which may be filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by **October 5, 1993**

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

Date of hearing: August 30, 1993
CD/Specialist ID: 01070
Seq. No.: 001
Copies mailed on September 20, 1993 to:

CAROLYN MILES
PATRIARCH INC
LOCAL OFFICE #01