

- DECISION -

Claimant:
ERIK S ANGE

Decision No.: 2479-BR-12

Date: August 14, 2012

Appeal No.: 1114732

S.S. No.:

Employer:
LATTA CONSTRUCTION TEXAS LLC

L.O. No.: 61

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.

- 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: September 13, 2012

PREAMBLE

On March 16, 2012, the Circuit Court for Anne Arundel County remanded the above captioned case to the Board of Appeals, Department of Labor, Licensing and Regulation, to determine whether the claimant voluntarily quit his employment for good cause or valid circumstance.

REVIEW OF THE RECORD

After a review on the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision:

The claimant was hired by the employer as a carpenter to work on the construction of a new hotel. The claimant was told by his employer that he would need to use his own tools. On his first day of work, the claimant brought the tools he thought that he would need. He was told that these were not the right tools and borrowed tools from other workers for the first day. When the claimant approached his employer about his lack of desired tools, the employer told him that if he did not have the right tools he could not work.

During the weekend, after his first day of work, the claimant attempted to borrow money so that he could buy the required tools but he was unsuccessful. The required tools would cost the claimant around \$1,000.00 which he did not have. The claimant called his employer to see if he could borrow money to purchase the additional tools. The employer told the claimant he could not talk to him and to call back later that evening. The claimant called but the employer did not answer the call. The claimant tried to reach his employer several more times to discuss the matter but the employer did not return any of the claimant's phone calls.

The claimant did not return to work because he could not afford to pay over \$1000.00 for the tools he discovered he would need to do his job.

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 Board is persuaded by the first hand testimony of the claimant that he voluntarily quit his job for good cause because he could not afford the additional tools needed for the job. The claimant made every effort to acquire these tools but was unsuccessful. The employer would not return the claimant's phone calls as he tried to resolve the matter. The employer did not attend the hearing. The claimant's assertions are unrefuted.

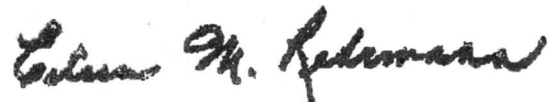
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

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

DECISION

It is held that the claimant voluntarily quit, but for good cause connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8 Section 1001. No disqualification is imposed based upon the claimant's separation from employment with LATTA CONSTRUCTION TEXAS, LLC.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

ERIK S. ANGE

LATTA CONSTRUCTION TEXAS LLC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ERIK S ANGE

SSN #

Claimant

vs.

LATTA CONSTRUCTION TEXAS LLC

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: 1114732

Appellant: Claimant

Local Office : 61 / COLLEGE PARK

CLAIM CENTER

May 10, 2011

For the Claimant: PRESENT

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, Erik S Ange, worked one day for this employer, Latta Construction Texas LLC, on December 3, 2010. At the time of his voluntary quit, the claimant worked full-time as a carpenter, earning an hourly salary of \$15.00.

The claimant worked only one day for this employer and thereafter failed to return to work as scheduled. The claimant realized after he began this employment that he needed additional tools to perform his duties. The claimant did not have the money to buy these tools. He also did not want to pay for parking in downtown Baltimore, where the job site was located. The claimant was aware when hired that the job would be located downtown.

The claimant did not adequately discuss these concerns with his supervisor prior to leaving the job site on December 3, 2010. The claimant was scheduled to work the following Monday. He attempted to call the employer over the weekend with no success, but elected not to report to work the following Monday. The claimant notified his supervisor sometime later that he was quitting for personal reasons.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001, states 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 the actions of the employer, or without valid circumstances. A circumstance is valid only if it is (i) a substantial cause directly attributable to, arising from, or connected with conditions of employment or the actions of the employing unit; or (ii) of such necessitous or compelling nature 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 credible evidence, he/she voluntarily quit his/her position with this employer for reasons which constitute either good cause or valid circumstances, pursuant to the Maryland Unemployment Insurance Law. (Hargrove v. City of Baltimore, 2033-BH-83). In the case at bar, the claimant did not meet this burden.

A general dissatisfaction with one's job does not amount to a either "good cause" or "valid circumstance" for quitting where one is aware of the complained conditions at the time of hire. As the Board of Appeals held in Gisriel v. Charles H. Steffey, Inc., 1085-BH-83, "The claimant...resigned his employment...because he was no longer willing to cope with the (conditions of employment). The claimant was well aware of these job conditions at the time of hire. The claimant has neither good cause nor valid circumstances for resigning."

In Lawson v. Security Fence Supply Company, 1101-BH-82, the Board of Appeals held "An intention to quit one's job can be manifested by actions as well as words;" while in Baker v. Broadway Services, Inc., 233-BR-90, the Board of Appeals held "The claimant failed to report to work or call in for three consecutive days.... The claimant voluntarily quit without good cause or valid circumstances."

In the instant case, the claimant evidenced his intent to quit when he failed to return to work as scheduled. The claimant claims he attempted to contact his supervisor to discuss his concerns about parking and the tools needed for the job. However, when he was unable to contact him by phone, he chose not to report to the job site the following work day to discuss these concerns. The claimant then informed his supervisor later he was quitting for personal reasons. The claimant worked only one day and failed to pursue reasonable alternatives to preserve his employment before quitting. The claimant failed to show good cause or valid circumstances for quitting under the law.

Accordingly, the claimant failed to meet his burden in this case and the claimant's voluntary quit was neither for good cause nor due to a valid circumstance. Benefits are denied.

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 November 28, 2010, 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.



C A Applefeld, 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

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 May 25, 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: May 02, 2011

BLP/Specialist ID: QB29G

Seq No: 004

Copies mailed on May 10, 2011 to:

ERIK S. ANGE

LATTA CONSTRUCTION TEXAS LLC

LOCAL OFFICE #61