

- DECISION -

Claimant:	Decision No.:	2763-BR-14
MARK ADAMS	Date:	March 18, 2015
	Appeal No.:	1416337
	S.S. No.:	
Employer:	L.O. No.:	64
21ST CENTURY ONCOLOGY SERVICES INC	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: April 17, 2015

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on August 6, 2014. That Decision held that the claimant had voluntarily quit his employment, without good cause or valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were denied from the week beginning April 13, 2014, and until the claimant has become reemployed, earned at least fifteen (15) times his/her weekly benefit amount, and become separated from that employment under non-disqualifying conditions.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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. *Md. Code Ann., Lab. & Empl. Art., §8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant appeared and testified. The claimant was afforded the opportunity to offer documentary evidence and to present a closing statement. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing or to allow additional legal argument in this matter.

The Board finds the hearing examiner's Findings of Fact are not supported by substantial evidence in the record. The Board rejects those Facts and makes the following Findings of Fact:

The claimant worked part-time for 21st Century Services, Inc. from February 1, 2013 until April 18, 2014 as a patient transporter. The claimant had a second part-time job with Aberdeen Proving Ground wherein he was laid off in October 2013.

The claimant believed that he could get another part-time position or work full time for 21st Century Services. However, there were no full time positions at 21st Century Services. During his job search, the claimant was offered a full time security position with benefits in the state of Florida. The claimant gave his two weeks' notice, sold his belongings and relocated with his family to Florida. The claimant wanted to work in Florida for the warmth and for his health, as well as a fulltime job with benefits. When he arrived, he discovered that the employer had hired another party and that no other jobs were available with the company.

Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001, 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 valid circumstance for voluntarily leaving work is a substantial cause 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. To establish a valid circumstance for leaving one's employment, a claimant is expected to have attempted to adjust the grievance, or explored other options, prior to leaving unless such action would have been futile or fruitless.

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).

The weight of the credible evidence established that the claimant quit his position to move to Florida for the warmth of the climate, his health, and to accept a full time job with benefits. The claimant had been working two part time positions. He had been laid off from one of his part time jobs. The Board finds that the claimant's reasons for quitting his part-time job were necessitous and compelling and that he had no option other than quitting this part-time job to accept a full-time position.

Voluntarily quitting one's job to accept better employment cannot constitute good cause within the meaning of Section 8-1001 as a matter of law. *Total Audio - Visual v. DLLR*, 360 Md. 387, 395, 758 A.2d 124, 128 (2000)("[a] plain reading of Section 8-1001 makes clear that leaving employment for a better paying job does not constitute 'good cause'.") It may, however, constitute "valid circumstances" if it can be shown that the reasons for quitting meet the "necessitous or compelling" test of Section 8-1001(c)(ii).

This is a stricter test than the "good cause" test. *Plein v. DLLR*, 369 Md. 421 (2002). Under this stricter test the Court of Appeals requires that more needs to be shown and that the precipitating event or cause "would reasonably [have] impel[led] the average able-bodied qualified worker to give up his or her employment." *Total Audio - Visual, supra, quoting Board of Educ. of Montgomery County v. Payner*, 303 Md. 22, 29, 491 A.2d 1186, 1189-90 (1985).

There must be a showing of something more connected with the conditions of the prior employment which motivated the claimant to quit his or her job to better employment to constitute a valid circumstance within the meaning of Section 8-1001.

The Board has held, that when quitting a job that does not offer health benefits to accept a job that has health benefits may be for valid circumstances within the meaning of § 8-1001. *Lester W. Davis, Jr. v. Daniel G. Schuster, LLC*, 438-BH-03. The need to look for and accept employment that offer health care benefits is not solely economic. *Id.* There is a large segment of the American population that lacks health care benefits which is creating a serious nationwide health care crisis. *Id.* The need for individuals to have health benefits is a health concern as well as an economic concern. *Id.* Given the high cost of medical care today, the claimant's quitting one job that offered no health benefits for a job that offered health benefits was both of such a "necessitous" and "compelling" nature that the claimant had no reasonable alternative other than leaving employment. *Id.*

The Board notes that the financial circumstances of a claimant are not a factor to be considered when determining entitlement to unemployment benefits. A claimant may only receive benefits if the claimant is both qualified, based upon the most recent separation from employment, and eligible, based upon compliance with Agency requirements. The claimant's economic situation was not considered by the Board in its conclusion to reverse the hearing examiner's decision.

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 upon a preponderance of the credible evidence, that the claimant met his burden of proof and showed that he quit this employment for valid circumstances within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The decision shall be reversed for the reasons stated herein.

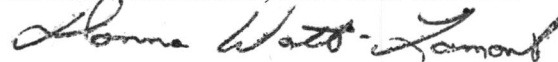
DECISION

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 June 1, 2014 and the 14 weeks immediately following.

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

MARK ADAMS

21ST CENTURY ONCOLOGY SERVICES

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARK ADAMS

SSN #

Claimant

vs.

21ST CENTURY ONCOLOGY SERVICES
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: 1416337

Appellant: Claimant

Local Office : 64 / BALTOMETRO

CALL CENTER

August 06, 2014

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, Mark Adams, began working for this employer, 21st Century Services Inc., on or about February 1, 2013. At the time of separation, the claimant was working as a patient transporter. The claimant last worked for the employer on or about April 18, 2014, before quitting under the following circumstances:

Claimant was laid off from a second part time job he had with the federal government and when he could not get additional hours from this employer, he decided to relocate to Florida for his health, the warmth and to look for other employment. Claimant lined up a job in Florida before he moved but when he got there they informed him that the job had already been filled. Claimant had given the employer two weeks-notice that he was resigning and relocating to Florida.

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.

In Total Audio-Visual Systems, Inc. v. DLLR, 360 Md. 387 (2000), the Court held that an individual who has left his or her employment to accept other employment has not left his or her job for good cause as defined in Section 8-1001(b)(1) of the Labor & Employment Article of the Annotated Code of Maryland. This is because quitting ones job for purely economic reasons is neither necessitous nor compelling. See also Plein v. Dep't of Labor Licensing & Regulation, 369 Md. 421, 800 A.2d 757 (2002); Gagne v. Potomac Talking Book Services, Inc., 374-BH-03.

However, a finding of valid circumstances is appropriate if the claimant can show that accepting the alternative employment was "of such a necessitous and compelling nature that the individual had no reasonable alternative other than leaving the employment." Gaskins v. UPS, 1686-BR-00.

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 claimant was clear in his testimony that he wanted to relocate to Florida for his health and the warmth. He also stated he wanted to work there and had obtained another job before he left Maryland. However when he arrived in Florida the new employer informed the claimant that the job had already been filled. Claimant was not under doctor's orders to relocate to a warm climate but it was a personal decision that the claimant made. I find that the claimant left this position for several reasons, among them new employment. There was continuing work available for the claimant with 21st Century and he liked working there.

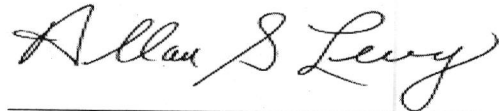
Claimant provided no testimony to warrant a finding of valid circumstances to justify his decision to leave his employment.

It is thus determined that the claimant has concurrently failed to demonstrated that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances within the meaning of the sections of law cited above.

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 13, 2014 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 modified.



A S Levy, 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 of Further Appeal

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a further appeal 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 August 21, 2014. 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: July 24, 2014

BLP/Specialist ID: RBA85

Seq No: 001

Copies mailed on August 06, 2014 to:

MARK ADAMS
21ST CENTURY ONCOLOGY SERVICES
LOCAL OFFICE #64