

- DECISION -

Claimant:
BERNADETTE A STULL

Decision No.: 2937-BR-14

Date: November 19, 2014

Appeal No.: 1401782

Employer:
NEW HORIZONS

S.S. No.:

L.O. No.: 63

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: December 19, 2014

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on April 22, 2014. That Decision held that the claimant had voluntarily quit her employment, without good cause or valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were not allowed for the week beginning July 14, 2013, and until the claimant has become reemployed, earned at least fifteen (15) times 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)*.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered the opportunity to present closing statements. 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 allow additional argument.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts, however, are insufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact but concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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).

In the claimant’s appeal, her representative reiterates much of the claimant’s testimony from the hearing. The claimant’s representative contends the employer made a substantial and material change in the terms and conditions of employment between the time the claimant applied for and accepted the position and the time she began her employment. Claimant’s counsel cites, as error, the hearing examiner’s finding that the claimant did not exercise all reasonable alternatives prior to quitting this employment. The claimant’s representative makes other contentions which are beyond the scope of the Board’s review.

The Board finds that the hearing examiner failed to give sufficient consideration to the claimant’s understanding of the position and duties, and whether that understanding was reasonable under the circumstances. The Board concludes that the claimant reasonably believed she had applied for and accepted a position consistent with her training, education and experience in “business-to-business” sales, or “outside” sales. The claimant had no experience in, and no interest in, direct marketing, tele-marketing, or “inside” sales. The claimant argued, at the hearing, that the employer engaged in deceptive practices in this regard. However, there was no evidence that the employer was at fault in the ultimate misunderstanding.

It was not until the claimant reported for work on her first day that she learned the position would entail her performing direct marketing to individuals in an attempt to sell them educational services. The claimant objected to this type of work, but more importantly, had no actual background in this type of work. At the hearing, the claimant argued that she had concerns about whether the employer’s business practices were ethical. The claimant did not offer any evidence to support her belief, however.

Contrary to the hearing examiner’s statement, the claimant did bring her concerns about the difference in what she believed the job was and what it actually was to the employer. The claimant was advised there

was no position available in outside sales and that the job for which she was hired was in tele-marketing. The Board finds the claimant did explore available alternatives to quitting this employment.

The Board concludes that, regardless of anything the employer did or did not do, the claimant reasonably believed she had accepted a position in outside sales and only learned after starting the employment, it was tele-marketing. The claimant had no other alternative, at that time, but to quit a position for which she lacked experience, training, or education. The Board is satisfied the claimant left this position for reasons which were personally compelling and, as such, has established valid circumstances for leaving.

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 did not meet her burden of proof and show that she quit this employment with good cause within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The claimant did meet her burden of proof and show that she quit this employment with 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

The Board holds that the claimant voluntarily quit this employment without good cause but with valid circumstances within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*. The claimant is disqualified from the receipt of benefits from the week beginning July 14, 2013, and for the following four weeks.

The Hearing Examiner's decision is Reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

BERNADETTE A. STULL
NEW HORIZONS
VENABLE LLP

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

BERNADETTE A STULL

SSN #

Claimant

vs.

NEW HORIZONS

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: 1401782

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

April 22, 2014

For the Claimant: PRESENT, VIRGINIA G. ROSA

For the Employer: PRESENT, PHILLIP FORD

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). Whether this appeal was filed timely within the meaning of Section 806 of the Labor and Employment Article.

FINDINGS OF FACT

A Notice of Benefit Determination was mailed to the parties in this case. The determination had an appeal deadline of January 17, 2014. In this case, the appeal was filed by facsimile on January 22, 2014. The appellant offers as a reason for the late appeal that she faxed it the same day she received it. The claimant returned home on January 15, 2014. The claimant lives with her mother and her mother had misplaced some of her mail because of cognitive issues.

The claimant, Bernadette A. Stull, began working for this employer, New Horizons, in July 16, 2013. At the time of separation, the claimant was working as an education consultant. The claimant last worked for the employer on July 17, 2013, before quitting due to dissatisfaction with the position.

The claimant believed she applied for a strategic outside account position. The employer at this local franchise never had such a position available. The claimant was hired by Phillip Ford, general manager. The claimant was hired as an education consultant. The claimant was dissatisfied with the position after going through one day of training and quit the following day. The claimant felt like there were concerns about the employer's business practices after one day of training. She did not discuss her concerns with anyone from the employer.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-806(e) provides, in essence, that either a claimant or employer has 15 days after the date of the mailing of the benefit determination to file a timely appeal. COMAR 09.32.11.01(B) provides that an appeal is considered filed on the earlier of the following: (a) the date that is delivered in person to any office of the Department of Labor, Licensing and Regulation ("DLLR") that accepts appeals, or (b) the date on which it is postmarked by the U. S. Postal Service. Appeals filed after that date shall be deemed late and the determination shall be final, unless the appealing party meets the burden of demonstrating good cause for late filing. COMAR 09.32.11.01B(3) provides that "the period for filing an appeal from the Claims Specialist's determination may be extended by the Hearing Examiner for good cause shown." Good cause means due diligence in filing the appeal. Francois v. Alberti Van & Storage Co., 285 Md. 663 (1979) and Matthew Bender & Co. v. Comptroller of the Treasury, 67 Md. App. 693, 509 A.2d 702 (1986).

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.

In the instant case, the appellant filed a late appeal within the meaning of Section 8-806 because that appeal was tendered after the deadline date. Once an appeal has been filed late, the burden is on the appealing party to show by credible evidence that good cause exists. Cooper v. Holy Cross Hospital, 328-BR-86. In this case, the appellant has met this burden because the claimant was not in control of the mail and when she received it on January 22, 2014, she submitted her appeal. The claimant exercised due diligence in pursuing her appeal rights. The late-filed appeal will be permitted.

The claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit her 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 quit the employment after one day of training due to her feeling that she was not going to work the position she applied for and she felt the employer's business practices were questionable. The claimant alleged that the employer was placing her in a different position than what she was hired to do. The employer's witness credibly testified that the position the claimant alleges that she was hired to do was never available and she was told the position at hire. The claimant alleged that the employer had questionable business practices but failed to discuss any concerns with the employer or complete the training process to determine if there were in fact any ethical issues.

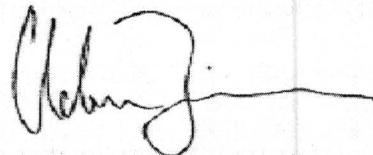
It is thus determined that the claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances within the meaning of the sections of law cited above.

DECISION

IT IS HELD THAT the appellant filed a late appeal with good cause within the meaning and intent of Md. Code Ann., Labor & Emp. Article, Section 8-806(e).

IT IS FURTHER 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 July 14, 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 modified.



A C Zimmerman, 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 May 07, 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: April 14, 2014
CH/Specialist ID: WCU61
Seq No: 002
Copies mailed on April 22, 2014 to:

BERNADETTE A. STULL
NEW HORIZONS
LOCAL OFFICE #63
VIRGINIA G. ROSA STAFF ATTORNEY