

- DECISION -

Claimant:
MARKNATE ALFRE PATRICIO

Decision No.: 3241-BR-14

Date: February 21, 2015

Appeal No.: 1416962

Employer:
UPM PHARMACEUTICALS INC

S.S. No.:

L.O. No.: 60

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: January 20, 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 25, 2014. That Decision held that the claimant had voluntarily quit him employment, without good cause but with valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were not allowed for the week beginning June 15, 2014, and the following five weeks.

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. The claimant appeared and testified. The claimant was given the opportunity to offer and object to documentary evidence. The claimant was 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 are sufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact and conclusions of law but finds that only the minimum five-week penalty is warranted on the facts of this case. The hearing examiner's decision shall be modified accordingly.

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 his appeal, the claimant offers no specific contentions of error as to the findings of fact or the conclusions of law in the hearing examiner's decision. The claimant reiterates his testimony and arguments from the hearing. The claimant does not cite to the evidence of record and makes no other contentions of error.

The Board finds the weight of the credible evidence supports a finding that the claimant voluntarily quit his job when his schedule changed due to the unavailability of daycare for his children. This constitutes a personal reason for quitting. Therefore, a finding of good cause cannot be found as a matter of law. The Board finds, however, that due to the short notice, the claimant had no other reasonable alternative but to quit. Therefore, a finding of valid circumstances is supported.

The Board does not concur with the hearing examiner's imposition of a six-week penalty. The Board finds the minimum five week penalty is measured and appropriate on the facts of this case.

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.

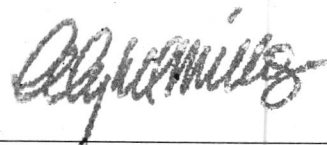
The Board finds, based upon a preponderance of the credible evidence, that the claimant did not meet his burden of proof and show that he quit this employment with good cause within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The claimant did meet his burden of proof and show that he quit this employment with valid circumstances within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. A five week penalty shall be imposed; Therefore, the hearing examiner's decision shall be modified for the reasons stated herein.

The employer should note that, provided that it has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Emp. Art. § 8-616*, any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. *See Md. Code Ann., Lab. & Emp. Art., § 8-611(e)(1)*.

DECISION

The Board holds that the claimant voluntarily quit this employment 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 for the week beginning June 15, 2014, and the following four weeks.

The Hearing Examiner's decision is Modified.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

MARKNATE ALFRE PATRICIO

UPM PHARMACEUTICALS INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARKNATE ALFRE PATRICIO

SSN #

Claimant

vs.

UPM PHARMACEUTICALS 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: 1416962

Appellant: Claimant

Local Office : 60 / LARGO

August 25, 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, Marknate Patricio, began working for this employer, UPM Pharmaceuticals Inc., in June 2008. At the time of separation, the claimant was working full-time as a manufacturing technician. The claimant last worked for the employer on June 20, 2014, before voluntarily quitting due to lack of childcare.

The claimant primarily worked second shift for the employer. Working second shift allowed him to share childcare responsibilities with his wife who also works. Occasionally he was required to work first shift but would be told in advance which would allow him and his wife to work out the childcare. In June 2014 management informed the claimant that he was being shifted to first shift indefinitely. The claimant took time off from work to search for childcare. The claimant found two different babysitters but both resigned

shortly after starting. After not securing childcare, the claimant told the employer he could not work first shift. The employer was unwilling to change its position on the claimant working first shift. The claimant provided notice of resignation then resigned effective June 28, 2014.

CONCLUSIONS OF LAW

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.

The claimant was required to abruptly change the shift that she worked for years and did not have a chance to change her child care arrangements. She had a valid circumstance for leaving. Young v. Evergreen Health Group, 31-BR-88.

The claimant voluntarily quit because he had no one to care for his daughter during the evening hours. Quitting one's job due to child care problems is not good cause, but can be valid circumstances if the situation is compelling or necessitous and there is no reasonable alternative to quitting. The claimant's situation meets these standards. The claimant voluntarily quit without good cause, but with valid circumstances. Norman v. Esskay, Inc., 470-BR-91.

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 he 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 been met.

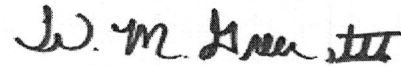
The claimant voluntarily quit due to lack of childcare. The claimant primarily worked the same shift throughout his work history with the employer. The claimant was then switched to another shift indefinitely. The claimant was unable to secure reliable childcare due to this change. The claimant's voluntary quit was without good cause. The claimant has shown that his reason for quitting was necessitous and compelling and that he had no reasonable alternative other than leaving the employment.

I hold the claimant's voluntary quit was without good cause, but for valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1001 pursuant to this separation from this employment. Benefits will be allowed after the claimant serves a weekly penalty.

DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning June 15, 2014, and for the five (5) weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified.



W E Greer, 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 September 09, 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: August 05, 2014
DW/Specialist ID: UTW1K
Seq No: 001
Copies mailed on August 25, 2014 to:

MARKNATE ALFRE PATRICIO
UPM PHARMACEUTICALS INC
LOCAL OFFICE #60