

DECISION

Claimant:
SONJA J SIMKO

Decision No.: 3366-DR-10

Date: August 11, 2010

Appeal No.: 0925560

Employer:

S.S. No.:

KOHL'S DEPARTMENT STORES INC
DRIVE

L.O. No.: 60

Appellant: Claimant

Under §8-5A-10 and 8-806 of the Labor and Employment Article, the Board of Appeals denies your petition for review in this case. Since an appeal has not been allowed, the decision of the Hearing Examiner will remain in effect. This is the final decision of the Department of Labor, Licensing and Regulation. Any further appeal should be made to the circuit 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 appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal to court expires on September 10, 2010



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

TBW

Copies mailed to:

SONJA J. SIMKO
KOHL'S DEPARTMENT STORES INC
KOHL'S DEPARTMENT STORES
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

SONJA J SIMKO

SSN #

Claimant

vs.

KOHL'S DEPARTMENT STORES INC
DRIVE

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: 0925560

Appellant: Claimant

Local Office : 60 / TOWSON CALL
CENTER

May 13, 2010

For the Claimant: PRESENT, AQUANETTA MOMYER

For the Employer: PRESENT, TELMA TABORGO

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 worked for this employer December 9, 2008 through January 28, 2009. At the time that the claimant voluntarily quit, the claimant was working as a Point of Sales Associate.

The claimant voluntarily left her employment for more money per hour at another employer. The claimant was working part-time for Kohl's making \$7.50 per hour with the potential to work up to 30 hours per week. She left Kohl's to work for Ann Taylor Loft for \$10.25 per hour with the same potential to work up to 30 hours per week. The claimant did not ask Kohl's for more hours or a better per hour wage prior to leaving. She did ask Kohl's if they had any management positions available. However, she did not inquire

as to any other potential positions that may have been available to her at Kohl's.

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.

An individual who has left his or her employment for better pay has not left for a reason that is directly attributable to, arising from, or connected with the conditions of employment or actions of the employing unit and has therefore not left with good cause as defined in Section 8-1001(b) 1, nor with valid circumstances as defined in Section 8-1001(c) 1(i). Total Audio-Visual Sys. V. Department of Labor, Licensing & Regulation, 360 Md. 387, 758 A.2d 124 (2000).

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 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 was very clear and convincing that she left her employment at Kohl's because she could make a better per hour wage at Ann Taylor Loft. Voluntarily leaving employment for better pay does not constitute good cause or valid circumstances. See Total Audio-Visual Sys. V. Department of Labor, Licensing & Regulation, 360 Md. 387, 758 A.2d 124 (2000). Therefore, 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 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 January 25, 2009 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.

N Grimes

N Grimes, 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 June 01, 2010. 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 26, 2010
CC/Specialist ID: UTW3H
Seq No: 002
Copies mailed on May 13, 2010 to:
SONJA J. SIMKO
KOHL'S DEPARTMENT STORES INC
LOCAL OFFICE #60
KOHL'S DEPARTMENT STORES