

- DECISION -

Claimant:
UWE C SCHARF

Decision No.: 3612-BR-13

Date: August 28, 2013

Appeal No.: 1224131

S.S. No.:

Employer:
BERLITZ LANGUAGES INC

L.O. No.: 63

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 27, 2013

PROCEDURAL HISTORY

On October 17, 2013, the Board of Appeals ("Board") denied the appellant's *Petition for Review* of a decision concerning his claim for unemployment insurance benefits. A *Petition for Review* on behalf of the claimant was subsequently filed with the Circuit Court for Baltimore City. The Board filed a *Motion for Remand* on June 18, 2013. The Circuit Court for Baltimore City ordered the case remanded back to the Board on July 5, 2013. The Board was ordered to further consider the circumstances regarding the petitioner's separation from employment and whether "good cause" or "valid circumstances existed for the voluntary separation from employment.

REVIEW OF THE RECORD

After a review of the record, the Board makes the following findings of fact:

The claimant was qualified and had been receiving unemployment benefits.

The claimant accepted a part time job as a language teacher in order to reenter the workforce. The claimant was paid \$10.45 per 45 minute unit.

After accepting the part time position, the claimant worked for one day, then, realized that he could not afford to keep the position due to the low payment of wages and the cost of the long commute. The claimant, although German was not his specialty, took the position because he, "...wanted to work."

When the claimant made the actual calculations, on the compensation versus costs, the claimant found that, "...instead of making money, I would actually lose money." (*See Claimant Exhibit #1*).

Before resigning, the claimant requested the employer to reimburse him \$20.00 in gas money for each time he reported to work. His employer was unable to accommodate his request.

CONCLUSIONS OF LAW

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.

When the claimant voluntarily leaves work, he has the burden of proving that he left for good cause or valid circumstance. *Hargrove v. City of Baltimore*, 2033-BH-83. In the instant case, the claimant met his burden of proof that he voluntarily left his job for valid circumstances. The cost that the claimant

experienced in his part time job was so severe as to be a necessitous and compelling reason to quit. Additionally, the claimant pursued all reasonable alternatives before he quit.

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

DECISION

It is held that the claimant voluntarily quit, but for valid circumstances 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 BERLITZ LANGUAGES INC

The Hearing Examiner's decision is reversed.

The employer should note that any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record, provided the employer has not elected to be a reimbursable employer pursuant to *Maryland Annotated, Labor & Employment Article, § 8-611(e)(1)*.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

VD/lj

Copies mailed to:

UWE C. SCHARF

BERLITZ LANGUAGES INC

BERLITZ LANGUAGES INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

UWE C SCHARF

SSN #

Claimant

vs.

BERLITZ LANGUAGES 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: 1224131
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

August 03, 2012

For the Claimant: PRESENT

For the Employer: PRESENT, MEGHAN BULKA

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, Uwe C. Sharf, worked for Berlitz Languages, Inc. from January 18, 2012 until January 23, 2012. The claimant earned \$13.66 per hour while working part time as a German teacher.

The claimant sought part time work from the employer teaching German in Rockville. He sought this work because he has prior experience teaching German, although it is not his primary occupation. He was offered and accepted \$10.25 per lesson unit or class plus \$10.00 per day travel expenses. The offer did not guarantee any specific number of teaching assignments that are contingent on enrollment by potential students. He traveled to Rockville for the job interview and then returned on two (2) additional dates for training by the employer. The claimant lives in the Baltimore area and the round trip commute to Rockville was about 100 miles. He taught three (3) lesson units or classes on January 18, 2012. He decided that it

was not economically feasible to prepare for classes, travel to Rockville and teach and return home. The claimant, for these reasons, quit his employment effective January 23, 2012.

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 term "leaving work voluntarily" is not defined anywhere in Section 8-1001, and absent some imperative reason for enlarging its meaning, the term should be construed as having its ordinary and commonly accepted meaning. Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975).

The phrase "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 own choice, intentionally, of his own free will, terminated the employment. Allen v. CORE Target City Youth Program, 275 Md. 69, 338 A.2d 237 (1975).

EVALUATION OF EVIDENCE

In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence presented at the hearing that the quit was for either good cause or valid circumstances, as those terms are defined above. Hargrove v. City of Baltimore, 2033-BH-83. In this case, the claimant has not met this burden.

The claimant was offered and accepted part time employment a long distance from his home, knowing that his remuneration would be contingent on enrollment in German language lessons by potential students. He was also aware of the travel allowance of just \$10.00 per day. He traveled to the location where he was going to work for the job interview and two (2) training sessions. The expense and time involved in the travel was not therefore unknown to him before he undertook teaching. He had taught German before this job and he was therefore aware of the preparation time involved for teaching classes. The claimant simply did not make any estimate or give much thought to whether accepting or continuing his employment was worth the time and effort in advance.

The cases cited by the claimant in support of his position, Chambers v. Henry H. Yue, 03657-BR-98 (1998) and Brown v. Mena Marketing Services, Inc., 1426-BR-93 are factually distinct from this case and therefore have no application. Brown allowed a finding of valid circumstances in an instance of minimal pay *plus* unsuitability of work leading to the claimant's quit. Chambers concerned a claimant who was working both a full time job and a part time job at the same location; the claimant then lost the full time job. Valid circumstances were found for her quit of the part time job based on low pay and travel time involved. In this case, the claimant was already unemployed and he knew or should have known that the job was

likely to involve low pay and long travel before he accepted it.

The reasons for his quit were therefore without good cause or valid circumstances and an unemployment penalty will be imposed pursuant to Md. Code Ann., Labor & Emp. Article, Section 8-1001.

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 15, 2012, 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 Examiner is affirmed.

B Taylor

B. Taylor, 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 August 20, 2012. 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 30, 2012

BLP/Specialist ID: WCU3A

Seq No: 002

Copies mailed on August 03, 2012 to:

UWE C. SCHARF
BERLITZ LANGUAGES INC
LOCAL OFFICE #63