

- DECISION -

Claimant:
BRIAN M GARTNER

Decision No.: 397-BR-12

Date: January 26, 2012

Appeal No.: 1138910

S.S. No.:

Employer:
PRICE SELF STORAGE

L.O. No.: 65

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: February 27, 2012

REVIEW OF THE RECORD

The claimant prevailed on the issue of whether the claimant filed a timely appeal. This issue was not appealed to the Board; therefore, the Board shall not address this issue and the hearing examiner's decision in this regard stands.

After a review of the record, the Board adopts the following findings of fact and reverses the hearing examiner's decision.

The claimant was employed as a full-time leasing agent specialist. The claimant is unemployed as the result of a voluntary quit.

The claimant was hired for an hourly wage of \$11.00 per hour. The claimant was required to complete a 90 day probationary period after which the claimant would be provided free housing and utilities. The claimant accepted the job (that paid a much lower wage than he was accustomed) on condition that at the expiration of the 90 day probationary period he would receive free housing and utilities. This was a basis of the bargain for acceptance of the employment.

Notwithstanding, prior to April 21, 2010 the claimant was informed that the free housing and utilities offer was being unilaterally withdrawn. The employer breached its promise to the claimant. The claimant was not given the opportunity to complete the 90 day probationary period when the employer withdrew the housing and utilities offer. The offer withdrawal was not for a disciplinary reason.

Because the claimant had to find work that paid more than \$11.00 per hour, the claimant sought and obtained other work. As a result, the claimant voluntarily quit his job with this employer. The reason the claimant quit was because the free housing and utilities offer was withdrawn as a part of the claimant's compensation package. This was a detrimental change in the claimant's conditions of employment.

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.

The Board finds the claimant’s counsel’s arguments regarding the merits of this case persuasive. The hearing examiner was required to liberally interpret the facts in favor of coverage and strictly construe the disqualification provisions of the law. The claimant’s testimony was credible and uncontradicted. The employer, duly notified of the date, time and place of the hearing, failed to appear. The hearing examiner improperly weighed the evidence in the record.

A substantial detrimental change in working conditions can constitute good cause for voluntarily quitting employment. See *Rockstroh v. Brocatto's Restaurant*, 54-BH-86; *Johnson v. Gladenia, Inc.*, 702-BR-91; *Brown v. James Jenkins, Jr.*, 1890-BR-92. A reduction in pay is a substantial detrimental change. *Smith v. James Hondroulis*, 1687-BR-92.

The Board finds that *Total Audio - Visual v. DLLR*, 360 Md. 387 (2000) and *Plein v. DLLR*, 369 Md. 421 (2002) are inapplicable in the case at bar. The claimant did not quit in order to obtain better employment for purely economic reasons; the claimant quit because of a detrimental change in the conditions of his employment. The claimant's acceptance of new employment was merely incidental and not related to the reason the claimant quit his job.

When the employer withdrew its offer to provide free housing and utilities prior the end of the claimant's probationary period, the employer materially changed the conditions of the claimant's employment. The free housing and utilities offer was a basis of the bargain; had the employer not offered the free housing and utilities, the claimant would never have accepted the job. The free housing and utilities was a material part of the claimant's remuneration package. The claimant's reasons for quitting were directly related to the conditions of employment.

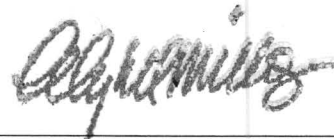
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant met his burden of demonstrating that he quit for good cause within the meaning of § 8-1001. The hearing examiner's decision shall be reversed for the reasons stated herein.

DECISION

It is held that the claimant voluntarily quit, but for good cause 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 PRICE SELF STORAGE.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

BRIAN M. GARTNER

PRICE SELF STORAGE

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

BRIAN M GARTNER

SSN #

Claimant

vs.

PRICE SELF STORAGE

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: 1138910

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

November 18, 2011

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). 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 October 28, 2011. In this case, the appeal was filed by facsimile and faxed on October 29, 2011. (Agency Exh. 1) The appellant filed his appeal late because initially he did not realize he needed to appeal. The claimant had initially received a call from the Agency indicating he would receive his benefits and the Visa card. Some days later, the claimant discovered the benefit determination for this case that denied him Unemployment benefits that also created an overpayment. The claimant is uncertain when he received the document as he does not check his mail daily. Upon discovering the denial letter in his mail,

The claimant did not delay the filing of his appeal. The claimant immediately filed his appeal, which was one day beyond the deadline to file.

The claimant, Brian Gartner, filed a claim for benefits establishing a benefit year beginning November 29, 2009. He qualified for a weekly benefit amount of \$410.00.

The claimant began working for this employer, Price Self Storage, on or about End of March 2010. At the time of separation, the claimant was working full-time as a Leasing Agent Specialist. The claimant last worked for the employer on or about April 21, 2010, before voluntarily quitting to accept another full-time employment opportunity.

The claimant was working for this employer full-time and for a friend part-time. His friend was a chiropractor and was providing the claimant work to do part-time. The claimant accepted employment with Price Self Storage because he was told that the current manager for the location he would be working was leaving and that after his 90 day probationary period, he would have the chance to move in to the house on-location which would be rent free. The claimant accepted the position even though the pay for the job would not fully maintain his lifestyle. Two weeks after beginning work, the claimant learned that the current manager was not leaving the on-site housing. Within a week or so later, the claimant's chiropractor friend offered the claimant the opportunity to work full-time remodeling his office. The project was slated to continue until completion. The claimant was going to make more money working on the full-time remodel project than he would if he continued with Price Self Storage. Further, the remodel project was work that he was trained to do and that he wanted to do. The remodel project also required the claimant to work six days a week, including Saturdays. Price Self Storage required all employees to work Saturdays. The claimant realized he would not be able to perform both jobs. The claimant then voluntarily quit Price Self Storage to continue full-time working for his friend on the remodel job.

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 09.32.06.01(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 09.32.06.01B(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 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.

“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 the reasons for quitting meet the ‘necessitous or compelling’ test of Section 8-1001 (c) (ii). Voluntarily quitting one’s job for purely economic reasons is neither ‘necessitous’ nor ‘compelling’ under Section 8-1001.

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 accept better employment to constitute a valid circumstance within the meaning of Section 8-1001.” Davis v. Daniel G. Schuster, LLC, 438-BH-03.

Voluntarily quitting one’s job to accept other employment cannot be considered good cause within the meaning of LE, Section 8-1001, because such a reason is not directly attributable to, arising from, or connected with either a condition of employment or an action of the employer. The Board concluded, however, that such a reason may be a valid circumstance, if the claimant can show that the acceptance of the new job was “of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment.” Gaskins v. United Parcel Service, 1086-BR-00.

Voluntarily quitting one’s job for purely economic reasons is neither “necessitous” nor “compelling” within the meaning of LE, Section 8-1001. There must be a showing of something more connected with the conditions of the prior employment that motivated the claimant to quit his or her job to accept better employment to constitute a valid circumstance within the meaning of Section 8-1001. Gagne v. Potomac Talking Book Services, 374-BH-03.

EVALUATION OF THE 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. The claimant credibly testified that he filed his appeal as soon as he discovered the benefit determination letter. The claimant exercised due diligence in filing his appeal. The late-filed appeal will be permitted.

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 not been met.

The claimant voluntarily quit his full-time position with Price Self Storage to accept full-time work for a friend. The claimant, who was working part-time for that friend, was offered the opportunity to begin working full-time remodeling his friend's office. The claimant accepted the job offer to earn more money and to perform work he enjoyed doing. The remodel job represented an increase in his pay for that project. The work was work he wanted to do. A voluntary quit to accept better employment cannot constitute good cause under Section 8-1001 of the Maryland Unemployment Insurance Law. Total Audio-Visual v. DLLR, 360 Md. 387, 395, 758 A. 2d 124, 128 (2000) The claimant accepted the job because of the increased pay. Voluntarily quitting one's job for purely economic reasons is neither necessitous or compelling, and fails to constitute a valid circumstance under Section 8-1001 of the Maryland Unemployment Insurance Law.

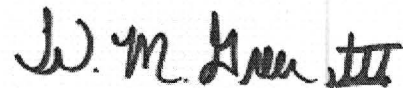
I hold the claimant's voluntary quit was without good cause or valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1001 pursuant to this separation from this employment.

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 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 18, 2010, 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 Claim 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 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 December 05, 2011. 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: November 15, 2011
DAH/Specialist ID: USB3D
Seq No: 003
Copies mailed on November 18, 2011 to:
BRIAN M. GARTNER
PRICE SELF STORAGE
LOCAL OFFICE #65