

-DECISION-

Claimant:
RICHARD D GRANT, SR

Decision No.: 4089-BH-12

Date: August 22, 2012

Appeal No.: 1000914

Employer:
MICHAEL GROUP INC, THE

S.S. No.:

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 21, 2012

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

RICHARD D. GRANT, Sr.
CORNELIA BRIGHT GORDON

PROCEDURAL HISTORY

The claimant filed for unemployment compensation benefits establishing a benefit year of November 25, 2007.

On December 29, 2009 a claim's specialist for the Agency determined that the claimant was disqualified from receiving benefits because the claimant voluntarily quit his employment and insufficient evidence was presented to show that the voluntary quit was for good cause or valid circumstances. The claimant timely appealed that determination.

On February 9, 2010, a hearing was held with the Lower Appeals Division on the claimant's appeal. The employer failed to appear at the hearing. The hearing examiner held that the claimant voluntarily quit his employment for valid circumstances. The claimant was disqualified from receiving benefits for a period of five (5) weeks.

The employer timely appealed the hearing examiner's decision to the Board of Appeals (Board). The Board remanded the matter to the Lower Appeals Division finding that the employer's failure to appear at the February 9, 2010 hearing was due to a severe snowstorm that blanketed the area. The employer had attempted to contact the Glen Burnie District Court building to determine if the hearing would be postponed due to the inclement weather. The employer received a recording that the District Court was closed due to the weather. However, the hearing was held. The Board remanded the matter to the Lower Appeals Division for a *de novo* hearing.

The Lower Appeals Division held the hearing on June 23, 2010. The hearing examiner held that the claimant's voluntary quit was for good cause and no disqualification was imposed.

The employer timely appealed the July 2, 2010 Lower Appeals Division decision to the Board. The Board reviewed the matter on the record and reversed the hearing examiner's July 2, 2010 decision. The Board held that the claimant voluntarily quit his employment without good cause or valid circumstances. The claimant was disqualified from receiving benefits from the week beginning January 4, 2009 and until he became re-employed or earned at least fifteen times his weekly benefit amount.

The claimant timely filed a Petition for Judicial Review of the Board's decision in the Circuit Court for Baltimore City. The Board entered a Motion for Remand to the Circuit Court to the Board for further review based on inconsistent statements in the Board's decision regarding the credibility of the parties' testimony at the June 23, 2010 hearing. On September 23, 2011 an Order was entered remanding the matter to the Board for further review.

The Board scheduled an additional hearing in this matter on March 27, 2012. Notice of hearing was sent to the parties at their addresses of record. No notices were returned as non-deliverable. The claimant and employer appeared and presented additional evidence.

FINDINGS OF FACT

The claimant was employed as a drywall mechanic for the employer, The Michael Group, Inc. from January 5, 2009 through January 6, 2009.

The claimant originally applied for employment with the employer as a foreman or other managerial position. He was informed that neither position was available. The claimant was offered the position of drywall mechanic. The claimant took the position to prove that he was reliable and dependable. He was hoping to prove himself and advance within a very short time with the employer.

The claimant suffers from moderate osteoarthritis of his knees, a pre-existing condition prior to his first day of work with the employer.

The claimant was assigned to work in a high rise building and was prohibited by his foreman from using the elevator while on the job. On his first day of work, after he was told he would be required to use the stairs, the claimant did not inform the on site project manager or anyone with management authority that he had osteoarthritis in his knees.

The claimant complained to the on-site supervisor, Mr. Greg Taylor, that he could not continue going up and down the steps. Doing so was causing the claimant's osteoarthritis of his knees to become exasperated. The claimant again inquired of Mr. Jeffrey Hill, the on-site project manager, whether another position was available for him that was more supervisory or managerial based on his experience. Mr. Hill informed the claimant that this was the only job available.

On the third day, the claimant did not show up to work. He spoke with Mr. Taylor and told him that he could not continue to climb the stairs that were required to do the job. The claimant was not told that he could use the elevator, if he provided a note from his doctor.

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).

Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(2) specifically provides, "an individual who leaves employment because of the health of the individual or another for whom the individual must care...shall submit a written statement or other documentary evidence of that health problem from a hospital or physician." If a claimant fails to provide medical evidence of alleged medical problems, neither good cause nor valid circumstances are supported. *See Davis v. Maryland Homes for the Handicapped*, 25-BR-84. Where a claimant has a chronic ailment, and where conditions in the workplace are such that healthy

persons are usually not affected, the claimant's medical problem is not considered connected with the work. *Ortiz v. Trappe Packing Corporation, 924-BR-92.*

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 a claimant voluntarily leaves work, he has the burden of proving that he left for good cause or a valid circumstance. *Hargrove v. City of Baltimore, 2033-BH-83.*

In *Arnold v. Friends Lifetime Care Baltimore, 767-BH-93*, the claimant's back problems were aggravated by the conditions of her employment. She has a valid circumstance for leaving the employment because she had no reasonable alternative other than to quit. The Board held that the claimant's condition does not amount to good cause because there is no evidence that the duties of her position were any more onerous than would normally be expected in such a job.

In *Matheny v. May Department Stores, Inc., 644-BR-87*, the claimant, who was within two years of retirement, developed arthritis of the ankle. This was documented by a doctor. As a result, she was unable to perform her duties and her commissions substantially dropped. She applied for a transfer to part-time work, but no transfers were available. The Board held that this was a necessitous and compelling reason to leave and was a valid circumstance.

The Board concurs with the hearing examiner regarding the employer's evidence as being double hearsay and therefore less reliable than the claimant's first hand testimony.

The Board acknowledges that the claimant suffers from "moderate osteoarthritis" in both his knees. The Board also acknowledges that the use of steps on the job caused the claimant's condition to become exasperated.

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 did meet his burden of demonstrating that he quit for valid circumstances within the meaning of §8-1001. The decision shall be reversed for the reasons stated herein.

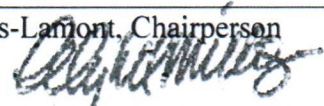
DECISION

It is held that the claimant left work voluntarily, without good cause but for valid circumstances, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. The claimant is disqualified from receiving benefits from the week beginning January 4, 2009 and the four weeks immediately following.

The Board of Appeals prior decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

RD

Date of hearing: March 27, 2012

Copies mailed to:

RICHARD D. GRANT SR
MICHAEL GROUP INC THE
CORNELIA BRIGHT GORDON ESQ.
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

RICHARD D GRANT, SR

SSN #

Claimant

vs.

MICHAEL GROUP INC, THE

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: 1000914

Appellant: Employer

Local Office : 63 / CUMBERLAND

CLAIM CENTER

July 02, 2010

For the Claimant: PRESENT

For the Employer: PRESENT , BARBARA CORSO

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).

PREAMBLE

A decision in this matter was originally issued on February 24, 2010. That decision was appealed to the Board of Appeals, and, by order dated April 16, 2010, the matter was remanded to the Lower Appeals Division for a *de novo* hearing.

FINDINGS OF FACT

The claimant began working for this employer on or about January 5, 2009. At the time of separation, the claimant was working as a full-time drywall point-up person for which the claimant was paid \$15.00 an hour. The claimant last worked for the employer on or about January 6, 2009, before quitting on or about

January 7, 2009 under the following circumstances:

The claimant suffered mild osteoarthritis in both knees (Claimant's Exhibit No. 1). At hire, he found out that he would have to take the stairs from the third floor to the 11th, 12th and 13th floors of the building in which he would be working, a senior citizen center. He would have to carry various tools with him. The elevators were available to the senior citizens; they were not available to those who worked on the premises. After both days he worked there, the claimant suffered pain and swelling in his knees and had to apply ice to them and take over-the-counter pain medication. He resigned on the third day, citing his inability to perform the job under the specified conditions, specifically due to the pain in his knees.

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.

Md. Code Ann., Labor & Emp. Article, Section 8-1001(c)(2) provides that an individual who leaves employment because of the health of the individual or another for whom the individual must care "shall submit a written statement or other documentary evidence of the health problem from a hospital or physician."

In Dean v. Eddie's Cleaners, Inc., 1114-BR-92, the claimant took a job, not understanding that her pre-existing medical condition made it impossible for her to perform her job duties. As soon as she realized that the job was medically unsuitable, she quit. The Board of Appeals determined that since the job was, in fact, medically unsuitable from the beginning, the quit was for good cause.

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 as to good cause.

The claimant submitted documentation as to his health problem from his treating physician (Claimant's Exhibit No. 1), confirming an arthritic condition in each knee. He testified credibly that he took the job without being informed that he would have to use the stairs instead of the elevator. When he found out he had to use the stairs, he attempted to do so for two days, but concluded he could not continue because of the pain in his knees. He attempted to secure another position with the employer, but was told that none were available. The employer presented testimony that the claimant was informed he could use the elevator if he provided medical documentation as to his condition. The claimant denied this. The employer's testimony was double hearsay and, therefore, of low reliability.

As with Dean, *supra*, the claimant, when he realized the job was medically unsuitable and was so from the beginning, he quit.

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

DECISION

IT IS HELD THAT the claimant left the employment voluntarily but with good cause within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. No disqualification is imposed based upon this separation from employment with this employer. The claimant is eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service regarding 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 reversed.



D A Fisher, 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

Any party 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 July 19, 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: June 23, 2010

DW/Specialist ID: WCU42

Seq No: 010

Copies mailed on July 02, 2010 to:

RICHARD D. GRANT SR

MICHAEL GROUP INC THE

LOCAL OFFICE #63