

**- DECISION -**

Claimant:  
SAMUEL G BAGGINS

Decision No.: 4173-BR-13

Date: September 25, 2013

Appeal No.: 1318474

S.S. No.:

Employer:  
TARGET DIV OF DAYTON HUDSON

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.

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**- 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: October 25, 2013

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's findings of fact and conclusions of law but modifies the decision.

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.

In the instant case the claimant quit for personal reasons which cannot be good cause within the meaning of § 8-1001(b) or valid circumstances within the meaning of § 8-1001(c)(1)(i) as a matter of law.

However, the Board finds that the weight of the credible evidence supports a finding that the claimant demonstrated necessitous and compelling reasons for quitting and that all reasonable alternatives were exhausted prior to quitting; therefore, a finding of valid circumstances within the meaning of § 8-1001(c)(1)(ii) is supported. The claimant's dire financial circumstances necessitated the need for him to move to Florida where his family was located.

The Board concurs with the hearing examiner's evaluation of the evidence with one exception; the Board finds that the facts of this case only warrant the minimum five-week penalty. The hearing examiner's decision shall be modified accordingly.

In the appeal to the Board, the claimant asks, "How can I be penalized for not 'diligently pursuing all alternatives' when I have been to multiple locations trying to follow the instructions that were given to me by the Target location in Bowie, MD?". The claimant's argument is misplaced. The gravamen of the claimant's reasons for the separation from employment were initiated by the claimant for personal reasons; therefore, a finding of good cause cannot be established as a matter of law.

The remaining remedy available to the claimant is a finding of valid circumstances, with the best legal outcome being a five-week penalty. The Board agrees with the claimant that the hearing examiner's imposed ten-week penalty was disproportionate in light of the claimant's compelling circumstances.

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 not meet his burden of demonstrating that he quit for good cause within the meaning of § 8-1001.

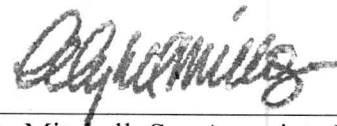
However, the Board finds based on a preponderance of the credible evidence that the claimant met his burden of demonstrating that he quit for valid circumstances within the meaning of § 8-1001. The minimum five-week penalty is measured and appropriate on the facts of this case.

The hearing examiner's decision shall be modified 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 February 17, 2013 and the four weeks immediately following.

The Hearing Examiner's decision is modified.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

KJK

Copies mailed to:

SAMUEL G. BAGGINS

TARGET DIV OF DAYTON HUDSON

TARGET STORES T-2133

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

SAMUEL G BAGGINS

SSN #

**Claimant**

vs.

TARGET DIV OF DAYTON HUDSON

**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: 1318474

Appellant: Claimant

Local Office : 65 / SALISBURY  
CLAIM CENTER

July 31, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, DAWN ODELL

**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, Samuel Baggins, began working for this employer, Target Division of Dayton Hudson Corporation, on September 19, 2012. At the time of separation, the claimant was working as a back room flow personnel. The claimant last worked for the employer on January 27, 2013, before quitting.

The claimant was living with his family because he could not otherwise afford to live in the area. However, the claimant was unable to pay his rent and his family evicted him. He experienced a financial crisis and chose to move to Florida because it was cheaper. He made extensive efforts to secure a job with the employer at its Florida location through a transfer, however, the transfer did not go through.

The claimant also made efforts to find affordable housing in Maryland close to the employer, but could not find housing that was safe enough for his family to live in such areas. Thus, the claimant resigned.

### **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.

### **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 offered credible testimony that he was forced to leave the Maryland area because he could no longer afford to live in the area. The claimant was living with family but was evicted after not paying his rent. The claimant looked for other housing, but could not afford housing in a safe area.

The claimant moved to Florida, as he could afford to live there and requested a transfer from the employer to its location near his new home. However, the transfer was not successful.

It is found that the claimant resigned with valid circumstances. While his resignation was not due to conditions directly related to the job, the claimant's reason for resignation was for a necessitous and compelling reason and he pursued all reasonable alternatives prior to resigning.

### **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 February 17, 2013 and for the nine 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](mailto: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.

*H Abramson*

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H Abramson, 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 August 15, 2013. 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 12, 2013  
DW/Specialist ID: USB7X  
Seq No: 007  
Copies mailed on July 31, 2013 to:  
SAMUEL G. BAGGINS  
TARGET DIV OF DAYTON HUDSON  
LOCAL OFFICE #65  
TARGET STORES T-2133