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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

ROBERT L. EHRLICH, JR., Governor
MICHAEL S. STEELE, Lt. Governor

Board of Appeals
Hazel A. Warnick, Chairperson

-DECISION-

Claimant:
LESTER W DAVIS. JR.

Decision No.: 438-BH-03

Date: March 5, 2003

Appeal No.: 0221380

Employer:
DANIEL G SCHUSTER LLC

S.S. No.:

L.O. No.: 60.

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.

Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- 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: April 4, 2003

- APPEARANCES -

FOR THE CLAIMANT:
Present

AGENCY
Mike Taylor

FOR THE EMPLOYER:
Margaret Johnson- Hr. Mgr.



EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

PRELIMINARY STATEMENT

Following the hearing held on January 21, 2003, the Board of Appeals agreed to hold the record open until February 4, 2003. The claimant was given this time to submit any documentation he wished that would show he was required by his union contract to leave employment with Daniel G. Schuster, LLC, and accept employment with Whiting Turner. As of February 10, 2003 the claimant has not presented the Board of Appeals with any additional documentation. The Board of Appeals therefore closes the record in this case and issues this decision.

FINDINGS OF FACT

The Board of Appeals adopts the findings of fact of the Hearing Examiner. The Board makes the following additional findings of fact.

The claimant was not required by his Union to quit his employment with Daniel G. Schuster, LLC, and accept employment with Whiting Turner.

The need to look for and accept employment that offers health care benefits is not solely economic. The large segment of the American population that lacks health care benefits is creating a serious health care crisis nationwide¹.

The need for individuals to have health benefits is a health concern as well as an economic concern for both the individual and the country.

CONCLUSIONS OF LAW

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

¹ According to a recent NBC news report, fourteen percent of the United States population is without health insurance. Eighty percent of the uninsured population work. Twenty-five percent of these individuals make over \$50,000.00 per year but are unable to afford health care insurance. This large population of uninsured is creating an enormous strain on hospital emergency rooms nationwide. Doctors working in emergency rooms have no choice but to administer health care to the uninsured when they arrive on their doorsteps. If these patients cannot pay, the cost is then passed on to those who are insured, thereby raising the health insurance premiums of those that are insured. Uninsured medical costs are now running at approximately \$35 billion a year.

arising from or connected with the conditions of employment or actions of the employer or without serious, 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.

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 that the reasons for quitting meet the “necessitous or compelling” test of Section 8-1001(c)(ii)².

This is a “stricter test” than the good cause test. *Plein v. DLLR*, 369 Md. 421 (2002). Under this stricter test, the Court of Appeals requires that more needs to be shown than that the precipitating event or cause ... would reasonably [have] impel[led] the average able-bodied qualified worker to give up his or her employment’.” *Total Audio – Visual, supra, quoting Board of Educ. Of Montgomery County v. Paynter*. 303 Md. 22, 29, 492 A.2d. 1186, 1189-90 (1985).

The Boards current interpretation of *Total Audio – Visual* read in conjunction with the *Plein* decision finds that voluntarily quitting one's job for purely economic reasons is neither “necessitous” nor “compelling” under Section 8-1001. To the extent that this interpretation is inconsistent, the Board overrules its prior precedent decision in *Gaskin v. UPS*, 1686-BR-00. See *Gagne v. Potomac Talking Book Services*, 374-BH-03

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. The Court of Appeals has stated, “Accepting more money and changing jobs is as much of a gamble and thus, as much of a personal matter as going into business for oneself. In [the Court of Appeals’] view, it is unmistakably clear that Section 8-1001 (a) was not designed to provide benefits when the precipitating cause for the voluntary leaving of employment was for higher pay or better job. Instead, it was designed to prevent hardship to persons who lost their job through no fault of their own.” *Plein v. DLLR*, 369 Md. 421 (2002), *quoting Total Audio – Visual*³ 360 Md. 387,

² Section 8-1001 (c) (i) is inapplicable as a matter of law in cases such as the one at bar. The Court of Appeals found, “[n]ot being directly related to, attributable to or connected with the employee’s employment or the actions of that employing unit, offers of higher pay as an inducement to leave existing employment must fall, if at all into [Section 8-1001(c)(ii)].”

³ In *Plein, supra*, the claimant was employed by Atlas Title & Terrazzo as a tile setter’s helper at a job paying \$9.00 per hour. He accepted employment with Home Depot, U.S.A. as a sales associate in the floor and wall department. The Home Depot job paid \$12.00 per hour with the prospect of receiving, after a waiting period, a health insurance plan and stock purchase options and, after one year, two weeks vacation and sick leave. The claimant left his employment with Atlas and began working at Home Depot on August 14, 2000. On September 27, 2000, the claimant was laid off through no fault of his own. The

400-01, 758 A.2d 124, 131.32 (2000). The Court explained in *Plein*, “ In *Total Audio – Visual*, this Court, albeit, and perhaps significantly so, a sharply divided one, determined, and held that the General Assembly did not intend that a person who voluntarily terminates his or her otherwise satisfactory employment for other employment with better pay be eligible to receive unemployment benefits when laid off through no fault of his or her own by the subsequent employer.”

The Board of Appeals concludes that the claimant in this case has met the standard set by the Court of Appeals and finds that the claimant quit his employment for reasons that were valid circumstances within the meaning of Section 8-1001 of the Labor and Emp. Article of Md. Code Ann., (Supp. 1996). Given the high cost of medical care today the claimant’s quitting one job that offered no health benefits for a job that offered health benefits was both of such a “necessitous” and “compelling” nature that the claimant had no reasonable alternative other than leaving the employment

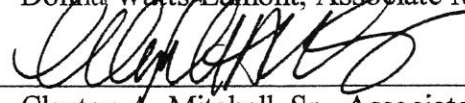
DECISION

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. He is disqualified from receiving benefits from the week beginning June 9, 2002 and the four weeks immediately following.

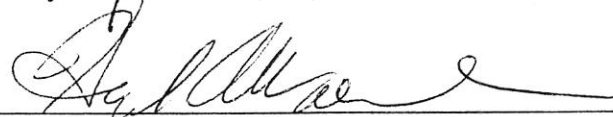
The decision of the Hearing Examiner is modified.



Donna Watts-Lamont, Associate Member



Clayton A. Mitchell, Sr., Associate Member



Hazel A. Warnick, Chairperson

Date of hearing: January 21, 2003

Copies mailed to:

LESTER W. DAVIS, JR.

DANIEL G SCHUSTER LLC

Michael Taylor, Agency Representative

Court of Appeals found that the claimant was not entitled to unemployment benefits under the “necessitous or compelling” test of Section 8-1001 under its interpretation and under the authority of *Total Audio – Visual, supra*.

UNEMPLOYMENT INSURANCE APPEALS DECISION

LESTER W DAVIS

SSN #

Claimant

vs.

DANIEL G SCHUSTER LLC

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: 0221380

Appellant: Claimant

Local Office : 60 / TOWSON CALL
CENTER

October 03, 2002

For the Claimant : PRESENT

For the Employer : PRESENT , MARGARET JOHNSON

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 was employed from April 23, 2002 through June 13, 2002 as a carpenter at a salary of \$14.00 per hour, full time.

The claimant was a "no-call/no-show" for two consecutive workdays on June 14, and June 17, 2002. On June 18, the claimant came to the employer's offices and resigned for the stated reason that he had found other employment.

The claimant accepted employment with Whiting Turner at a salary of \$18.00 per hour with full union benefits including health and welfare, retirement annuity and vacation pay. This employer was a non-union

employer and provided no benefits.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996) 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

Under the standards set by the Court of Appeals in Total Audio-Visual Systems, Inc. v. DLLR, 360 Md. 387 (2000), held that an individual who has left his employment for better pay has not left for a reason which is directly attributable to, arising from or connected with the conditions of employment or actions of the employing unit. Consequently, one who has left his job for a job with better pay has 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). The Court stated leaving one's existing employment for higher wages must fall, if at all, into the alternative definition of valid circumstances set forth in Section 8-1001 (c) (1) (ii).

Tracking this reasoning, the Board of Appeals has found in Gaskins v. UPS, 1686-BR-00, that valid circumstances are to be found if a claimant can show that acceptance of the "better job" was of such a necessitous and compelling nature that the individual had no reasonable alternative other than leaving the employment.

The evidence presented by the claimant did meet the standard. The evidence established that the claimant quit his employment so that he could receive a \$4.00 per hour increase in salary, health and welfare benefits, (medical insurance) for his family, contributions to his retirement and paid vacation credits. The evidence further establishes that the claimant received no benefits with his present employer.

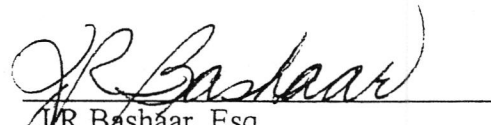
It should be noted that the claimant testified that it was not his decision to leave his employment with this employer, rather he was following union rules and state law. With respect to the union rules, the claimant alleges that he was reassigned by his union to Whiting Turner. The claimant offered no evidence to establish that the union had any authority to do so.

The claimant offered Claimant's Exhibit 1, a State of Maryland, Labor, Licensing and Regulation Office of Unemployment Insurance notice stating the claimant's responsibility when filing for unemployment insurance, as authority that the claimant was required to accept the union assignment and leave this employment. There is no merit whatsoever in the claimant's argument.

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 (Supp. 1996). The claimant is disqualified for the week beginning June 9, 2002 and for the nine weeks immediately following.

The determination of the Claim Specialist is modified.


J/R Bashaar, 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 410-949-0022 or 1-800-827-4839. 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.

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 October 18, 2002. 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

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: September 09, 2002
CH/Specialist ID: UTW64
Seq No: 002
Copies mailed on October 03, 2002 to:
LESTER W. DAVIS
DANIEL G SCHUSTER LLC
LOCAL OFFICE #60