

DECISION

Claimant:
JOHN W SHOEMAKE

Decision No.: 4687-SE-12

Date: September 28, 2012

Appeal No.: 1041280

Employer:
SINES ENTERPRISES LLC

S.S. No.:

L.O. No.: 65

Appellant: Claimant

Issue: See NOTES below for special issue.

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 8-1001 (voluntary quit for good cause), 8-1002-1002.1 (gross/aggravated misconduct connected with the work), or 8-1003 (misconduct connected with the work).

- 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 29, 2012

- APPEARANCES -

FOR THE CLAIMANT:
Present
Donald H. Nixon Esq.

FOR THE EMPLOYER:
Michael Sines

EVALUATION OF THE EVIDENCE

The Board has considered all the evidence presented at all hearings, as well as the appeal file of the Department of Labor, Licensing and Regulation. The testimony and documentation presented by the appellant as to his separation from employment at the Special Examiner Hearing was sufficiently persuasive and compelling to reverse the decision of the Hearing Examiner. In that hearing, the first at which both claimant and employer attended simultaneously, the parties admitted that the claimant was asked by the employer to stay beyond his normal quitting time to perform a non-emergency task on September 18, 2010. The claimant, having made other plans for the remainder of the day, declined to stay beyond his usual hours because of those plans on that occasion. As a result, the claimant was terminated. The claimant had not been disciplined in the past for similar actions and, actually did stay beyond his normal work hours in the past – after having been given prior notice. He had also refused such requests in the past without consequence. The claimant credibly denied having voluntarily quit his employment.

FINDINGS OF FACT

The claimant was employed as a full-time general manager by the employer herein from May 1, 2006 to September 18, 2010. On September 18, 2010, the claimant was asked by the employer to stay beyond his normal quitting time to perform a non-emergency task. The request was made approximately ten (10) minutes before the claimant was due to leave the employer's premises for the day. The claimant had made plans after his work day, stated this fact to the employer and declined to remain. The employer terminated the claimant at that time. The claimant had not been disciplined in the past. The claimant had stayed beyond his work hours at the employer's request in the past and had also declined staying beyond his hours in the past without consequence. The claimant did not voluntarily quit his employment.

CONCLUSIONS OF LAW

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises, within the meaning of Section 8-1003 of the Labor and Employment Article. (See, *Rogers v. Radio Shack*, 271 Md. 126, 314 A.2d 113).

FINDINGS OF FACT

The claimant began working for this employer on or about May 1, 2006. At the time of separation, the claimant was working as a general manager. The claimant last worked for the employer on September 18, 2010, before the claimant was told he did not have to work out the rest of his two week notice period. The claimant obtained an offer for a new job. He accepted this offer; however, there was not a firm start date for his new employment. He informed the employer of record that he was quitting, but he was not sure when he would be starting his new job. The employer allowed the claimant to extend his notice period until the new job started. The understanding between the employer and the claimant was that there was a standing two week notice period. The claimant would extend this two week period every week when he did not hear from his new employer regarding the date that he would start. The claimant never withdrew his resignation.

The claimant stayed on for several months during which time, he continually told his employer that he would be leaving soon. The claimant's attitude regarding his work began to deteriorate. On the final day of employment, the claimant refused to help move a truck bed in the store. The claimant refused as was 3:00 p.m., which is the end of the claimant's shift. The claimant refused to help, even after the employer pointed out that the claimant had come in approximately two hours late one day during the prior week and the employer did not take any action. The claimant was then told the employer would no longer accept any extensions of his two week notice period and that he did not have to work for the remainder of his notice period.

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.

The fact that the employer asked for and received one week's notice, as opposed to three days notice, does not negate the claimant's intention to voluntarily quit. Nor does the employer's act of allowing the claimant to continue working until a replacement was found void the resignation. An employer is not required to accept an employee's withdrawal of her voluntary quit because the employee later changes her mind. Bean-Armstrong v. Industrial Knife Company, 756-BR-92.

DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon the claimant's separation from employment with SINES ENTERPRISES.

The decision of the Hearing Examiner is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

YJ

Date of hearing: May 31, 2012

Copies mailed to:

JOHN W. SHOEMAKE
SINES ENTERPRISES LLC
DONALD H. NIXON ESQ.

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS REMAND DECISION

JOHN W SHOEMAKE

SSN # 218-25-1102

Claimant

vs.

SINES ENTERPRISES 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: 1041280

Appellant: Claimant

Local Office : 65 / SALISBURY
CLAIM CENTER

December 15, 2011

For the Claimant:

For the Employer: PRESENT , MIKE SINES

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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

PREAMBLE

This case was an employer's timely appeal of a benefit determination made on October 12, 2010. The case was heard on November 19, 2010 and a decision was issued on December 14, 2010. The claimant failed to appear at the hearing. The claimant filed a timely appeal of that decision to the Board of Appeals, which affirmed the decision. The claimant then appealed to the Circuit Court for Allegany County, which granted a joint motion to remand the case to the Board of Appeals to return to the Hearing Examiner directing him to consider the information contained in the Agency's fact finding report. The Hearing Examiner reviewed the record and the Agency's fact finding report and issues this new decision on the merits.

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 the reasons for the voluntarily quit from the position with the employer of record constitutes 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 quit to accept other employment, which is neither good cause nor valid circumstance. He did not know when his new job was going to start, but he already gave his two weeks notice to his employer. The employer graciously allowed the claimant to extend his notice period for several months. During this time the claimant continually told his employer that he would be starting his other job soon. The employer was under no obligation to extend to claimant's notice period at all and this was not a withdrawal of the claimant's resignation. Both parties clearly intended that the employment was ending. The employer eventually declined to extend the claimant's notice period. This does not change the claimant's intention to voluntarily quit his position. See Bean-Armstrong supra. The claimant never attempted to rescind his resignation.

The claimant did not appear at the hearing. However, as directed by the Circuit Court for Allegany County, the fact finding report was taken into consideration when this new decision was made. The claimant denied that he ever told the employer that he was going to quit. In the fact finding statement, the claimant stated that he was discharged for refusing to stay late. However, this is hearsay evidence and is not found to be credible in light of the employer's credible direct testimony about what actually transpired. As such, this is simply insufficient evidence to find that the claimant was discharged.

It is thus determined that the claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to show good cause or valid circumstances within the meaning of the sections of law cited above.

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 September 12, 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 Claims Specialist is reversed.

S Weber

S Weber, 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 January 03, 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 : November 19,2010

CH/Specialist ID: USB5F

Seq No: 002

Copies mailed on December 15, 2011 to:

JOHN W. SHOEMAKE

SINES ENTERPRISES LLC

LOCAL OFFICE #65