

- DECISION -

Claimant:
ROWAN D BREMMER

Decision No.: 4980-BR-13

Date: November 25, 2013

Appeal No.: 1324618

S.S. No.:

Employer:
MARINE TECH EQUIPMENT L L C

L.O. No.: 65

Appellant: Employer

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: December 25, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact, but finds that they warrant a different conclusion of law.

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 Board finds the weight of the credible evidence supports a finding that the claimant voluntarily quit his job because of unsafe working conditions that persisted after notice. The Board finds the claimant's testimony credible and un-refuted. The Board finds the claimant's reason for quitting was directly attributable to the conditions of employment.

In the appeal to the Board, the employer states it did not appear at the hearing due to a "misunderstanding". The employer's postponement / telephone hearing request was filed and received by the Lower Appeals Division on September 11, 2013. The employer contends it requested, "that the hearing be changed to a telephone hearing due to the inconvenience of the hearing being 45 minutes away from our office". The hearing date was September 12, 2013.

COMAR 09.32.11.02(S) provides, in pertinent part:

Telephone Conference Hearings.

* * * * *

(3) In all telephone hearings, documentary evidence which a party intends to offer shall be mailed to the hearing examiner and all other parties at least 5 days before the hearing.

The Lower Appeals Division did not abuse its discretion when it properly denied the employer's late postponement / telephone hearing request. The hearing notice states

*Request for postponement must be received in writing at the Appeals Division at least three working days before the date of the hearing. A postponement will be granted only if it is determined there is good cause. Parties are responsible for determining whether their case has been postponed. **We will not notify if the postponement request is denied.*** (italics and bold in original).

The Lower Appeals Division must weigh the moving party's reasons for its request against the interests of the other party's right to have a prompt hearing on the merits of the case and the burden on the Lower Appeals Division.

In the instant case, the employer's request was made not received by the Lower Appeals Division three working days prior to the hearing. The employer's request was received the day prior to the hearing. There was insufficient time to re-notice the hearing and to provide the parties the opportunity to exchange and submit documentary evidence. Notwithstanding, the dispositive fact in this instance is that the employer did not file a timely request. The Board does not find that a forty-five minute drive constitutes an inconvenience that requires a telephone hearing. There is no due process violation.

In the instant case, the employer's request was properly denied as untimely.

The parties, duly noticed of the date, time and place of the hearing, were afforded a full and fair opportunity to present their case before the hearing examiner. Notwithstanding the Board's discretion to take new evidence, *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)(2)*, "the presentation of evidence must come to an end at some point". *Maryland State Police v. Zeigler, 330 Md. 540, 556 (1993)*.

The appellant / employer in the instant case had clear notice of the obligation to present a case before the DLLR Hearing Examiner. *DLLR v. Woodie, 128 Md. App. 398, 411 (1999)*. The hearing notice provided,

This hearing is the last step at which either the claimant or the employer has an absolute right to present evidence. The decision will be made on the evidence presented. The decision will affect the claimant's claim for benefits, and it may affect the employer's contribution tax rate or reimbursement account.

In addition, the notice stated, in bold print, that additional "important information" could be found on the reverse side of the notice. Because the employer was on notice that the only absolute opportunity to present evidence was before the DLLR Hearing Examiner, the employer had no legitimate justification for the failure to present the evidence in the first hearing. *See DLLR v. Woodie, 128 Md. App. 398, 401 (1999)*.

If an appealing party fails to appear at a hearing having been given the required notice of the hearing, the hearing examiner or the Board of Appeals may issue a decision on the facts available or may dismiss the appeal. *COMAR 09.32.11.02(N); COMAR 09.32.06.03(M)*. There are no cognizable defects in the record. Instead, the only end served by the Board remanding this case or having an additional hearing before the Board would be to allow the employer a second opportunity to present evidence: evidence it was free to present at the first hearing. *See DLLR v. Woodie, 128 Md. App. 398, 408 (1999)*. In the instant case, the Board finds that the parties were afforded their due process rights of notice and an opportunity to be heard.

Notice of the date, time and place of the Appeal Hearing was mailed to the parties on August 28, 2013. The file contains a simultaneously, computer created copy of all notices, showing that the notices were mailed to the address of record of each party. No notices have been returned to the Agency to indicate a failure or inability to deliver. The employer failed to appear. The decision of the Hearing Examiner is correct, based upon the evidence presented.

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 decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

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 MARINE TECH EQUIPMENT L L C.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

ROWAN D. BREMMER

MARINE TECH EQUIPMENT L L C

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE CORRECTED APPEALS DECISION

ROWAN D BREMMER

SSN #

Claimant

vs.

MARINE TECH EQUIPMENT L L C

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: 1324618

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

October 02, 2013

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).

FINDINGS OF FACT

The claimant, Rowan D Bremmer, began working for this employer, Marine Tech Equipment LLC, on or about June 20, 2013. At the time of separation, the claimant was working as a truck driver. The claimant last worked for the employer on or about June 25, 2013, before quitting under the following circumstances:

On the claimant's first day of work he was sent to Washington to make a delivery using a rollback flatbed truck. Claimant felt the truck was not safe. The next day he was sent over the Key Bridge to make a delivery at the Baltimore harbor with the same truck. The claimant believed the flatbed began to roll back because a chain lock was not staying in place and needed to be fixed. Claimant brought this to the attention

of his supervisor and boss. They said the truck had been that way for about one year. On June 24 claimant did not use the truck since it was supposed to go into the shop for repair. On June 25 the truck had not been repaired. The claimant submitted his resignation sine he did not want to drive an unsafe truck.

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 she 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 employer did not appear for the hearing to provide testimony. I found the claimant to be credible. I believe his testimony that he thought the flatbed truck was not safe and that it need to be repaired. He did not prove the truck was unsafe but did show that he acted on his honest belief that the truck was unsafe. I find that he showed he acted because he believed the circumstances were of such a compelling nature that he had no reasonable alternative other than to resign his position.

It is thus determined that the claimant has demonstrated that the reason for quitting rises to the level necessary to demonstrate 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, 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 June 23, 2013 and for the (9) 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 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.



A S Levy, 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 October 17, 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: September 12, 2013

DW/Specialist ID: USB25

Seq No: 006

Copies mailed on October 02, 2013 to:

ROWAN D. BREMMER
MARINE TECH EQUIPMENT L L C
LOCAL OFFICE #65