



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
Mark L. Wasserman, Secretary*

*Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201*

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*Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member*

— DECISION —

Decision No.:	830-BH-93
Date:	May 11, 1993
Appeal No.:	9300301
S. S. No.:	
Employer:	Leonard W. Kearney, et al. c/o The Frick Company
L. O. No.:	40
Appellant:	CLAIMANT
Claimant:	John T. Leech
Issue:	Whether the claimant left work voluntarily, without good cause, within the meaning of §8-1001 of the Labor and Employment Article.

—NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

June 10, 1993

— APPEARANCES —

FOR THE CLAIMANT:

John Leech - Claimant

FOR THE EMPLOYER:

Employer not
represented

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

FINDINGS OF FACT

The claimant was employed by Leonard W. Kearney, et al, as a laborer from March, 1992 to June, 1992 and again from September, 1992 until he quit on or about November 10, 1992.

The claimant suffers from bronchial asthma and the employer was aware of this at the time he was hired. As a result of his health problem, he is unable to work in areas where the air is compressed.

Shortly before he quit, the claimant's position was changed by the employer to a rigger position. This required him to work in a subway tunnel which contains compressed air. The claimant attempted to perform this work, but found that he had difficulty breathing and felt as if a great weight were on his chest.

The claimant went to his supervisor and told him that he could not work under such conditions, due to his medical problem. The employer's response was that if he couldn't do the work, the employer did not need him. Consequently, the claimant quit.

CONCLUSIONS OF LAW

The claimant was physically unable to perform the new assignment, due to a documented medical problem of which the employer was aware. The claimant attempted to perform the assignment, despite the health risk, but found that he could not continue to work in such an environment. The claimant explained this to the employer, who nevertheless insisted that the claimant perform the work or quit.

The Board concludes that the claimant's decision to quit rather than continue to risk his health is a voluntary quit for good cause, connected with his work, within the meaning of §8-1001 of the Labor and Employment Article.

DECISION

The claimant left work voluntarily, but for good cause, within the meaning of §8-1001 of the Labor and Employment Article.

No disqualification is imposed based on his separation from employment with Leonard W. Kearney, et al.

The decision of the Hearing Examiner is reversed.


Associate Member


Associate Member


Chairman

HW:W:K

Date of Hearing: April 20, 1993

kbm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
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Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

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- DECISION -

Claimant:	John T. Leech	Date:	Mailed 2/3/93
		Appeal No.:	9300301
		S. S. No.:	
Employer:	Kearney, Leonard W., et al. c/o Frick Co., DIV 40	L.O. No.:	40
		Appellant:	Claimant

Issue: Whether the claimant left work voluntarily, without good cause, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1001.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

February 4, 1993

NOTE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

PRESENT

NOT REPRESENTED

FINDINGS OF FACT

The claimant had been employed at Leonard W. Kearney, et al. on two occasions. The claimant had been employed from March, 1992 to June, 1992. The claimant worked the second time for the employer from September, 1992 to November 10, 1992 as a riggers' helper earning \$14.20 per hour.

The claimant resigned employment from the employer because he did not want to work in the tunnel with the compressed air due to his condition of bronchial asthma. The claimant has submitted medical documents from the Francis Scott Key Medical Center where the claimant went to the clinic in the emergency department; however, the medical documents are not specific as to why the claimant was treated at the Francis Scott Key Medical Center. Also, the claimant has not submitted medical documentation that he cannot work in an area with compressed air.

CONCLUSIONS OF LAW

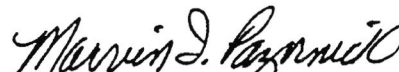
The Maryland Code, Labor and Employment Article, Title 8, Section 1001 provides that an individual shall be disqualified for benefits where his unemployment is due to leaving work voluntarily, without good cause arising from or connected with the conditions of employment or actions of the employer or without serious, valid circumstances. The preponderance of the credible evidence in the record will support a conclusion that the claimant voluntarily separated from employment, without good cause, within the meaning of Title 8, Section 1001.

The claimant resigned employment from the employer because of the claimant's contention that he could not work in a tunnel with compressed air. Since the claimant has not submitted medical documentation that he cannot work in a tunnel with compressed air, it will be held that the claimant voluntarily quit his job, without good cause, under the Maryland Code, Title 8, Section 1001 of the Law.

DECISION

The unemployment of the claimant was due to leaving work voluntarily, without good cause, under the Maryland Code, Labor and Employment Article, Title 8, Section 1001 of the Law. Benefits are denied for the week beginning November 8, 1992 and until the claimant becomes re-employed, earns at least ten times his weekly benefit amount (\$1,880.00) in covered wages, and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.


Marvin I. Pezornick
HEARING EXAMINER

DATE OF HEARING: 1/26/93
Specialist ID: 40329
gr/CASSETTE IN FILE
SEQ: 02

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Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)