

- DECISION -

Claimant:
BARBARA R COMEGYS

Decision No.: 85-BR-13

Date: February 8, 2013

Appeal No.: 1224563

S.S. No.:

Employer:
BALTIMORE COUNTY MD

L.O. No.: 63

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: March 11, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's 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 employer's appeal, its representative contends: "The employer believes that the testimony and evidence presented at the hearing clearly establish that the claimant voluntarily quit without good cause or valid circumstances but for personal reasons." The representative further contends, "...deciding to quit when there are clear alternatives, is either [sic] good cause or valid circumstances." [The Board infers the representative intended to state "neither"]

The Board has conducted a thorough review of the evidence of record from the Lower Appeals hearing. The Board agrees with the employer representative's contentions. The claimant did not exhaust the alternative available to her but quit abruptly, immediately regretting that decision and attempting to rescind the resignation. The claimant may have suffered from anxiety and this certainly may have exacerbated the situation. However, this does not establish valid circumstances where the claimant made no attempt to resolve the problem prior to quitting.

Prior to the meeting, during which the claimant quit, the employer had no intention of reprimanding her, disciplining her, or warning her. The employer simply wanted to discuss a situation which had occurred the previous day. The claimant reacted out of proportion to the scope and subject of the meeting, without a justifiable reason. The claimant made no attempt to resolve whatever grievance she had. The evidence here will not support a finding of valid circumstances and the Board reverses the hearing examiner's decision.

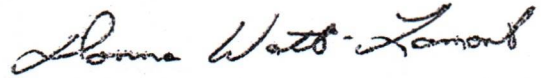
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant did not meet her burden of demonstrating that she quit for good cause or valid circumstances within the meaning of §8-1001. The decision shall be reversed for the reasons stated herein.

DECISION

It is held that the unemployment of the claimant was due to leaving work voluntarily, without good cause or 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 June 3, 2012, and until the claimant becomes re-employed, earns at least fifteen times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

BARBARA R. COMEGYS
BALTIMORE COUNTY MD
C. STEPHEN BASINGER ESQ.
CAROL STROUD
BALTIMORE COUNTY MD
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

BARBARA R COMEGYS

SSN #

Claimant

vs.

BALTIMORE COUNTY MD

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: 1224563

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

September 18, 2012

For the Claimant: PRESENT, C. STEPHEN BASINGER, ESQ., BARBARA POKLIS-LEWIS, ESQ.

For the Employer: PRESENT, CAROL STROUD, ANDREA RICHMOND, STEVEN HINKLE,
JENNIFER FRANKOVICH, ESQ.

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, Barbara R Comegys, worked for this employer for approximately six years, and her last day worked was June 7, 2012. At the time of her voluntary quit, the claimant worked full-time as an office assistant.

The claimant voluntarily quit this employment when she advised her immediate supervisor that she quit and walked out of a meeting before it had ended. At the time of separation, the claimant worked as an office assistant in the county's Department of Public Works. In this role, the claimant was responsible for answering phones; typing sewer and water records; keeping track of billing; ordering supplies; filing; and

processing mail.

On June 7, 2012, the claimant was called into a meeting by her immediate supervisor, and her former supervisor. At the beginning of the meeting, the claimant was advised that the purpose of the meeting was to address a matter that had taken place the day before. The day before a heated discussion between another manager and a subordinate had taken place at the claimant's desk; the claimant was not a participant or the subject of the discussion. The claimant's supervisor received a complaint from the manager involved in the discussion after the claimant approached the manager to attempt to speak to her about the incident. The claimant was advised that the purpose of the meeting was to address her getting involved in a dispute between another manager and a subordinate, and that she was to refrain from doing so in the future. At the time the meeting was called on June 7th, the claimant's supervisor had no intention of reprimanding the claimant. The claimant indicated that she felt like she was being singled out because of her comment about personal conversations in the office. The supervisor clarified for the claimant that the matter had nothing to do with personal conversation but rather, about the claimant inserting herself in the course of another manager giving another employee a directive. The claimant became very upset during the meeting and brought up issues from the past, claiming that she was being picked on and bullied. The claimant brought up a previous complaint she had brought against her immediate supervisor; the claimant was advised that that complaint had been addressed and resolved by the Director of Public Works. The claimant alleged during the meeting that she had notes about what her supervisor did on a daily basis but refused to talk about any details; she told her supervisor she intended to see to it that she was fired. At one point, the claimant indicated that she wanted to put the matter behind her and move forward; the claimant's supervisor did not respond to the claimant at that time. The claimant then indicated that this was not going to work and indicated that she quit. As she left the conference room, she asked her supervisor whether she was happy now. During this meeting, the claimant was not told that she would be written up or disciplined; or that her job was in jeopardy; nor was she advised to quit.

The claimant went to her desk. The claimant's former immediate supervisor, who was at the meeting, asked the claimant for her badge and keys; she helped the claimant remove her key from the keychain since she had difficulty doing so. The claimant willingly returned her badge and keys. The supervisor provided the claimant with a box for her personal items and walked the claimant to her car. The claimant turned to the supervisor indicating that she needed her job and could not afford to quit. The supervisor recommended that the claimant call her and the chief of administrative services by the end of the day. The claimant left.

Later that day, the claimant contacted the operations supervisor, and asked him whether the previous transfer offered to her was still available. This supervisor indicated that he would have to make a call and find out which he did. The transfer was no longer available and the claimant was advised as such. The operations supervisor asked the claimant to submit a letter of resignation but she never did. The operations supervisor completed the notice of separation form indicating that the claimant had voluntarily quit her job.

Prior to the claimant's resignation, the claimant was issued a written reprimand when during a staff meeting in January 2012, the claimant and another employee were advised that they would be the primary people responsible for answering phones and thus, had to coordinate any leave between them to ensure that one of them was on hand to answer the phones. An audit of the employer's operations at this office had revealed an issue with customer service which triggered staff changes. The claimant made a comment during the meeting that "this was bullshit"; the claimant was upset because she believed there was a third person who was available to answer the phone but because she had a heavy African accent, she would not be held

responsible for answering the phone.

On March 1, 2012, the claimant sought treatment from A.L.L. Psychotherapy to receive treatment for anxiety. The claimant sought continued treatment thereafter (CL EX. #5). The claimant never filed a workmen's compensation relating to her condition.

In March 2012, the claimant received a verbal reprimand when she was instructed by her supervisor, during a meeting, to sit down and the claimant refused indicating that she preferred to stand. The claimant told her supervisor as she left the room that she was making her sick.

On April 18, 2012 the claimant was advised that she would be reporting directly to the supervisor against whom the claimant had filed a complaint with the director for allegedly violating protocol with the Director of Public Works. The matter was resolved by the director without incident. The director of operations made several personnel changes to address the operational needs of the office.

On April 19, 2012, the claimant received an annual evaluation from her previous immediate supervisor. The evaluation indicated that the claimant had rated either successful or highly successful in each of the categories. The chief of administrative services subsequently amended this evaluation on April 30, 2012. Among the areas changed was the claimant's rating in some areas including "Team work and Cooperation" which was changed from highly successful to "needs improvement." These changes were made to reflect prior concerns and reprimands as reflected in the claimant's personnel file and previous counseling sessions. The claimant was placed on a performance improvement plan but nothing was indicated in the evaluation, or verbally, to the claimant that her job was in jeopardy. The claimant received a merit increase for her satisfactory evaluation. At the time of the claimant's separation, the claimant was not in jeopardy of being terminated, and there was continuing work available to her.

Prior to her resignation, the claimant had inquired about a possible transfer. The claimant was given the opportunity to transfer to another site but the claimant declined to go through with the transfer; the claimant's husband believed that the site was too remote for the claimant to drive to. Prior to resigning, the claimant did not explore alternatives such as a leave of absence; the claimant considered requesting Family Medical Leave but never submitted the medical paperwork.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001, states 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 the actions of the employer, or without valid circumstances. A circumstance is valid only if it is (i) a substantial cause directly attributable to, arising from, or connected with conditions of employment or the actions of the employing unit; or (ii) of such necessitous or compelling nature the individual has no reasonable alternative other than leaving the employment.

In Lawson v. Security Fence Supply Company, 1101-BH-82, the Board of Appeals held "An intention to quit one's job can be manifested by actions as well as words;" while in Smith v. P and J Contracting Company, Inc., 734-BH-89, the Board of Appeals held "The claimant voluntarily quit his job when he walked off the job site...."

In McClain v. D and G Container, Inc., 187-BH-90, the claimant voluntarily quit because she could not get along with a coworker. This coworker was a son of one of the owners. The employer was aware of the conflict and talked about it with the claimant and the other employee. The claimant stated that she could handle the situation. However, subsequently, the claimant resigned. The claimant quit without good cause or valid circumstances. There was insufficient evidence that the claimant was harassed or treated unfairly.

In Lyons v. Baltimore County Police Department, 16-BH-86, the claimant police matron believed a secretary in the office was not performing a sufficient amount of work and, on reporting it, was told the matter would be taken care of. The claimant resigned after becoming dissatisfied that her complaints did not have a more obvious and dramatic effect. The claimant's frustration with what she considered to be another employee's failure to live up to the rules does not constitute good cause or a valid circumstance.

In Veney v. Greater S.E. Community Hospital, 409-BR-87, the claimant's coworkers failed to act in a friendly manner towards her. However, the employer is not required to provide a working atmosphere in which coworkers are friendly toward the claimant. The claimant left without good cause or valid circumstances.

In Green v. Highland Health Facility, 438-BR-84, the Board of Appeals held "Where the claimant resigns due to a health problem resulting from an on-the-job injury, the reason for quitting is directly connected with the employment and constitutes good cause."

In Pinkney v. Host International, 142-BH-85, the claimant suffered from a stress-related medical condition which was aggravated by stressful working conditions; her doctor suggested she quit long before her actual resignation. The job was not hazardous to the health of the average worker, and a finding of good cause is not supported. However, since the claimant had no reasonable alternative but to leave the job, valid circumstances are supported.

EVALUATION OF EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, she voluntarily quit her position with this employer for reasons which constitute either good cause or valid circumstances, pursuant to the Maryland Unemployment Insurance Law. (Hargrove v. City of Baltimore, 2033-BH-83). In the case at bar, the claimant met this burden.

In the case at bar, the claimant evidenced her intent to quit her job when she advised her immediate supervisor, and her previous immediate supervisor present at the meeting, that she quit and left the meeting before it had ended. The claimant admitted that she did so. The claimant's testimony establishes that soon thereafter, she had a change of heart and wanted her job back. The claimant contacted the employer to attempt to rescind her resignation however, by that time the employer had already begun the process of processing her separation paperwork.

In her testimony, the claimant raised the issue of the amended evaluation as a factor in her decision to voluntarily quit her employment. In this respect, the claimant was issued an annual evaluation, prepared by her immediate supervisor, on April 19, 2012. Eleven days later, the claimant was presented with an evaluation amended by the chief of administrative services to reflect the prior reprimands as outlined above. The comments appended to the evaluation are consistent with the prior reprimands issued to the claimant; the claimant failed to present evidence that amendments to the annual evaluation of an employee are a

violation of some established policy or rule of the county. The claimant failed to prove that the reprimands and evaluation issued to her were unreasonable or issued in bad faith. The claimant's frustration or dissatisfaction with the administration of the office, and the response to her complaints regarding same, are insufficient, as a matter of law, to establish good cause or valid circumstance, as defined under Maryland Unemployment Insurance Law. See McClain, Lyons and Veney, supra.

At the continued hearing on this matter, the claimant offered in evidence a medical certificate from a psychotherapist dated July 13, 2012 establishing that beginning on March 1, 2012, the claimant began ongoing treatment for anxiety; no other medical documentation was offered in evidence. Notably, the claimant's anxiety began before the various reprimands, supervisory change and amended evaluation issued to the claimant which she cited as factors in her decision to resign. In the absence of more detailed medical documentation to establish that the claimant had no previous medical condition which was exacerbated by the conditions at work, or that the workplace conditions were hazardous to the health of the average worker, good cause cannot be found. However, the documentation offered is sufficient to establish that the claimant suffered anxiety which was aggravated by stress in the workplace which led her to resign from this employment.

Accordingly, the claimant met her burden in this case and the claimant's voluntary quit was due to a valid circumstance, warranting only the imposition of a weekly penalty.

DECISION

IT IS HELD 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 3, 2012, and for the four (4) 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.

V Nunez

V. Nunez, 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 October 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: September 10, 2012
BLP/Specialist ID: WCU2G
Seq No: 001
Copies mailed on September 18, 2012 to:

BARBARA R. COMEGYS
BALTIMORE COUNTY MD
LOCAL OFFICE #63
C. STEPHEN BASINGER ESQ.
CAROL STROUD