

- DECISION -

Claimant:
JAMES WHEELER

Decision No.: 1101-BR-01

Date: May 30, 2001

Appeal No.: 0106308

S.S. No.:

Employer:
JUST TEMPS INC

L.O. No.: 64

Appellant: Employer

Issue: 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: June 29, 2001

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. Although the decision of the Board will find a non-disqualifying reason for the claimant's separation from employment, it reaches its decision based on a different conclusion 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 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.

The general rule is that a worker for a temporary agency becomes unemployed the moment he finishes her remunerative assignment. As an unemployed person, he cannot be considered to have quit. The reason behind this rule is to assure that those who take action to alleviate their unemployment by accepting a temporary assignment are not treated more harshly than those who do less. *Steelman v. SES Temps.*, 2014-BR-93. **A person whose temporary assignment has come to an end is unemployed already and cannot quit.** Only a documented, longstanding history of continual and virtually uninterrupted employment will lead the Board to conclude that a failure to re-contact a temporary agency amounts to a voluntary quit. *Laster v. Manpower, Inc.*, 220-BR-90. The temporary agency employer has the burden of proving that the claimant's work tenure meets the requirements set out in *Laster*, supra, before a claimant's failure to re-contact the employer can constitute a voluntary quit. *Goodwin v. R and R Service, Inc.*, 1361-BR-92. However, once a person has begun work on an assignment from a temporary agency, leaving that assignment before it is completed is a voluntary quit. *Flack v. Sparks Personnel Service*, 354-BR-90.

The Board finds that the employer had failed to establish that the claimant's tenure of employment meets the *Laster* test. Although this single assignment was for over a one-year period, this fact alone does not establish a "longstanding history of continual and virtually uninterrupted employment" which established that the claimant had an affirmative duty to re-contact the employer for another temporary assignment. The Board notes that the claimant completed his assignment.

The Board reverses the conclusion of the law of the hearing examiner as to Section 8-1001 and finds that the claimant did not have the requisite intent to quit his job. He was already unemployed before the offer of another assignment was subsequently made on February 9, 2001.

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).

The Board bases its conclusions in this case upon Section 8-1003. The Board finds that the claimant was discharged on February 9, 2001 when his assignment ended. The facts of this case are similar to those in *Robinson v. SES Temps, Inc.*, 384-BR-90. In *Robinson*, the claimant worked for a temporary agency from November 6, 1989 to November 22, 1989, at which time the assignment ended. The employer attempted to call the claimant with an offer of a new assignment, but was unable to personally contact her. The Board held that the claimant was discharged from employment; she became unemployed when her

temporary assignment ended on November 22, 1989. No disqualification was imposed.

In the instant case, the claimant was employed from November 8, 1999 through February 9, 2001 at which time her assignment ended. The fact that the assignment lasted over a year is not relevant. The Board finds that the claimant was discharged on February 9, 2001, but not for misconduct within the meaning of Section 8-1003.

DECISION

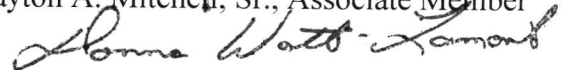
The decision of the hearing examiner is reversed as to the law. The Board reaches the same result, however, in that the claimant is not disqualified from the receipt of unemployment insurance benefits based on other legal grounds.

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 his separation from employment with Just Temps Inc.

The decision of the Hearing Examiner is modified.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Associate Member

Copies mailed to:

JAMES WHEELER

JUST TEMPS INC

LOCAL OFFICE #64

Michael Taylor, Agency Representative

UNEMPLOYMENT INSURANCE APPEALS DECISION

JAMES WHEELER

SSN #

Claimant

vs.

JUST TEMPS INC

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: 0106308

Appellant: Employer

Local Office : 64 / BALTOMETRO

CALL CENTER

May 03, 2001

For the Claimant :

For the Employer : PRESENT , RANDALL PRITCHARD

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).

FINDINGS OF FACT

The claimant was employed with Just Temps, Inc., on November 8, 1999. At the time of his separation from employment on February 9, 2001, he earned \$7.50 per hour as a machine operator assistant.

The employer is a temporary employment service. The claimant's last assignment was as assistant machine operator with the Dale Incore Company. The claimant's assignment with the Dale Incore Company ended because of a work slowdown.

On the same day, the employer offered the claimant an assignment with Russell Stanley Services. The claimant declined the job offer.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996) 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 'due to 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." Id. at 275 Md. 79.

EVALUATION OF EVIDENCE

When a claimant works for a temporary employment service, he is considered unemployed at the end of his last assignment. The claimant is not required to accept a subsequent offer of employment by the temporary service. The claimant's separation from employment occurred when he completed his last assignment with the Dale Incore Company. His failure to accept the employer's offer of another assignment does not constitute a separate separation from employment. The employer has presented no evidence of misconduct on the part of the claimant leading to his separation from employment with the Dale Incore Company and no disqualification is warranted.

DECISION

IT IS HELD THAT the claimant was separated from employment for non-disqualifying reasons within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996). No disqualification is imposed under this section of the law. The claimant is eligible to receive benefits from the week beginning February 25, 2001, provided that the claimant meets the other eligibility requirements of the Maryland Unemployment Insurance Law.

The determination of the Claim Specialist is affirmed.

S Moreland, 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 to Petition for Review

Any party may request a review 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 May 18, 2001. 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 : April 24,2001

DW/Specialist ID: RBA3E

Seq No: 001

Copies mailed on May 03, 2001 to:

JAMES WHEELER

JUST TEMPS INC

LOCAL OFFICE #64