

- DECISION -

Claimant:
TAMMY L DORSEY

Decision No.: 1418-BR-11

Date: March 23, 2011

Appeal No.: 1020813

Employer:
CAPITOL WOMENS CARE LLC

S.S. No.:

L.O. No.: 63

Appellant: Claimant

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: April 22, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact and reverses the hearing examiner's decision.

When the claimant requested to step down from being a supervisor, the employer advised her that she could, but would have to retain the responsibility for training others, even at the reduced rate of pay. The claimant had already seen her pay reduced, her benefits cut, a regular bonus eliminated, and her working relationship deteriorate. She had concerns about the safety and security of her property at work, but the employer did not address those concerns in any meaningful manner. The claimant considered her options and, after her father suffered a heart attack, concluded that the increased stress at work could be a

danger to her own health and well-being. She decided at that time to quit and seek a more comfortable and rewarding position elsewhere.

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(H)(1)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

“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.

A substantial detrimental change in working conditions can constitute good cause for voluntarily quitting employment. See *Rockstroh v. Brocatto's Restaurant*, 54-BH-86; *Johnson v. Gladenia, Inc.*, 702-BR-91; *Brown v. James Jenkins, Jr.*, 1890-BR-92. A reduction in pay is a substantial detrimental change. *Smith v. James Hondroulis*, 1687-BR-92. A substantial change in the agreed-upon hours of employment may constitute good cause, *DiBartolemeo v. Yaffe and Company of Baltimore, Inc.*, 1089-BH-89, *Heavner v. Auto Trader Company*, 195-BR-90, *Phillip s v. Loughlin Security Agency, Inc.*, 2116-BH-92, or valid circumstances if for compelling personal reasons, *Johnson v. Direct Housekeeping*, 183-BR-86.

The claimant did not come to the conclusion to quit abruptly. She did not leave this employment without attempting to resolve her grievances. She did not quit over any petty disagreement or without careful consideration. The evidence showed that the claimant quit this employment after several instances of having her pay reduced, her responsibilities increased, her bonus eliminated, her benefits cut, and even thefts of personal property within the office. The claimant attempted to resolve her grievances, but those attempts were fruitless.

In her appeal, the claimant expresses concern that the hearing examiner found that she had quit in order to care for her father after his heart attack. The hearing examiner did not come to that conclusion, but rather found that she quit for personal reasons. The Board does not agree with that conclusion. The greater weight of the credible evidence of record showed that the claimant quit because the workplace had, gradually, become intolerable due to changes made by the employer. The final incident went occurred when the claimant requested that she be allowed to step down from being a supervisor. She was told that even if she did that, and her pay was reduced, she would retain the majority of her prior supervisor

responsibilities. This, combined with the claimant reflecting upon her father's heart attack, caused her to conclude that she needed, for her own well-being, to quit this position and seek something more suitable.

The evidence showed that, had the employer not made the changes in pay, benefits and working conditions, the claimant would have likely remained employed. She had worked for this employer for nearly 18 years and had wanted to stay. It was not until the employer made several negative changes that the claimant considered leaving. The Board is satisfied that the claimant has established that she had good cause for quitting.

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 meet her burden of demonstrating that she quit this employment for good cause within the meaning of § 8-1001 for quitting this employment. The decision shall be reversed.

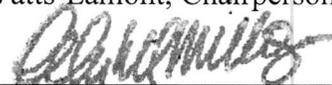
DECISION

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 CAPITOL WOMENS CARE, LLC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD/mw

Copies mailed to:

TAMMY L. DORSEY

CAPITOL WOMENS CARE LLC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TAMMY L DORSEY

SSN #

Claimant

vs.

CAPITOL WOMENS CARE 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: 1020813
Appellant: Claimant
Local Office : 63 / CUMBERLAND
CLAIM CENTER

July 08, 2010

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 worked for the above captioned employer from December 16, 1991, through April 27, 2010. The claimant earned \$20.75 per hour while working full time as a billing supervisor.

The claimant had been promoted to her final position about two years before the separation. The claimant had become frustrated with the job responsibilities of a supervisor, including the interaction with management. The claimant did not like the working conditions or environment of her office. She approached the employer about stepping down to return to her former position. The employer could not provide such a move under the conditions the claimant requested regarding hours and responsibilities. The claimant then chose to quit her position.

CONCLUSIONS OF LAW

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 Board of Appeals of Maryland has determined in Veney v. Greater S.E. Community Hospital, 409-BR-87, that an employer is not required to provide a "friendly" work environment.

EVALUATION OF THE EVIDENCE

The credible evidence presented at the hearing shows that the claimant voluntarily quit this position. In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence presented at the hearing that the quit was for either good cause or valid circumstances, as those terms are defined above. Hargrove v. City of Baltimore, 2033-BH-83.

The claimant has clearly shown that she was dissatisfied with the conditions of employment. However, she has failed to show that these conditions were anything new or unique. The claimant was at this company for over 19 years, the last two as a supervisor. Merely because she is no longer happy with the circumstances of her position, does not justify quitting that position.

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 April 25, 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 Examiner is modified.



M. Franceschini, 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 July 23, 2010. 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 : June 28,2010
CH/Specialist ID: WCU54
Seq No: 002
Copies mailed on July 08, 2010 to:
TAMMY L. DORSEY
CAPITOL WOMENS CARE LLC
LOCAL OFFICE #63