

***-DECISION-***

Claimant:  
DANNY T CHRISTOFANO

Decision No.: 2005-BH-11  
Date: April 13, 2011

Appeal No.: 1030530

Employer:  
TELLEN FOODS, LLC

S.S. No.:  
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.

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**- 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: May 13, 2011

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**- APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

TERRY TRUSTY

**EVALUATION OF THE EVIDENCE**

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

The claimant, duly notified of the date, time and place of the hearing, failed to appear. The Agency, duly notified of the date, time and place of the hearing, elected not to participate in this case.

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)*.

The Board finds the employer's testimony consistent and more credible than the claimant's testimony regarding the alleged "insufficient funds" issue. The claimant asserted that he quit because he did not receive his pay on the agreed-upon and customary payday. Friday was the date on which the claimant was to receive his pay. The claimant testified, "many times money funds weren't available until Tuesday of the following week". The Board finds the claimant's testimony in this regard vague and insufficiently specific. The claimant did not specify which weeks he was alleged to not have received his pay; he merely testified that "sometimes the funds [were not] available until Tuesday." The claimant submitted no documentary evidence to support his allegations. The claimant's written resignation makes no reference to the paycheck issue; instead, the claimant affirmatively states that he resigned to accept another job with another organization. The resignation letter does not support the claimant's allegations on the insufficient funds issue.

The employer, however, credibly testified that there was one instance where the claimant's timely receipt of pay became a potential issue. The third-party payroll processing company that issued the claimant's paycheck had a "glitch" in its system one Friday and for reasons unknown it did not issue the claimant a paycheck. The employer credibly testified that the claimant brought the matter to its attention, that the claimant's supervisor went to the bank and gave the claimant cash in the amount of his net wages. The employer credibly testified that the problem was cured on the Friday the problem arose. The employer's testimony regarding the regular and timely payment of the claimant's wages is supported and corroborated by payroll records. *See Employer's Exhibit B-3*.

The Board finds little merit in the claimant's assertion that he quit because of the employer's financial condition. The claimant initially accepted the job as a "turn around specialist" with this employer *because* the employer was in financial dire straits and needed his expertise and sales abilities to get it "out of the hole". There was work available for the claimant had he not quit. The fact that the employer may have



been experiencing financial difficulties is not sufficient to support a finding of good cause or valid circumstances for quitting.

For the reasons set forth above, the Board finds the employer more credible than the claimant and gives more weight to the employer's testimony and evidence. The Board is persuaded that the claimant quit his job to accept better employment for purely economic and personal reasons. There is insufficient credible evidence to support a finding of good cause or valid circumstances.

### FINDINGS OF FACT

The claimant was employed as a full-time Vice President of Sales and Marketing from October 1, 2009 through April 14, 2010. The claimant is unemployed as the result of a voluntary quit.

The employer has experienced some financial difficulty after acquiring the business in 2008. The claimant was hired as a "turnaround specialist" and was vested with the responsibility to preserve existing clients, procure new business and service the employer's clients. The employer was satisfied with the claimant's performance.

Sometime prior to the claimant's resignation, the claimant requested a raise in pay. The employer declined the claimant's request because it was not in the then-current financial position to increase his pay.

The claimant tendered his resignation by electronic mail on April 5, 2010. The claimant quit his position in order to accept better employment with another organization. The claimant's last day of work was April 14, 2010.

### CONCLUSIONS OF LAW

The findings of fact and evaluation of evidence are incorporated herein by reference.

"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).

In the instant case, the preponderance of the credible evidence supports a finding that the claimant manifested the requisite intent to quit his job.



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 three 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; (3) when the claimant's quit is caused by the individual leaving employment (i) to follow a spouse serving in the United States military or (ii) because the claimant's spouse is a civilian employee of the military or of a federal agency involved with military operations and the spouse's employer requires a mandatory transfer to a new location. *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(1)(iii)*. 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.

Voluntarily quitting one's job to accept better employment cannot constitute good cause within the meaning of Section 8-1001 as a matter of law. *Total Audio - Visual v. DLLR*, 360 Md. 387, 395, 758 A.2d 124, 128 (2000) ("[a] plain reading of Section 8-1001 makes clear that leaving employment for a better



paying job does not constitute 'good cause'.") It may, however, constitute "valid circumstances" if it can be shown that the reasons for quitting meet the "necessitous or compelling" test of Section 8-1001(c)(ii). Section 8-1001(c)(i) is inapplicable as a matter of law in cases such as the one at bar. The Court of Appeals found, "[n]ot being directly related to, attributable to or connected with the employee's employment or the actions of that employing unit, offers of higher pay as an inducement to leave existing employment must fall, if at all into [Section 8-1001(c)(ii)]."

This is a stricter test than the "good cause" test. *Plein v. DLLR*, 369 Md. 421 (2002). Under this stricter test the Court of Appeals requires that more needs to be shown and that the precipitating event or cause "would reasonably [have] impel[led] the average able-bodied qualified worker to give up his or her employment." *Total Audio - Visual, supra, quoting Board of Educ. of Montgomery County v. Payner*, 303 Md. 22, 29, 491 A.2d 1186, 1189-90 (1985).

The Board's current interpretation of *Total Audio - Visual*, read in conjunction with the *Plein* decision, finds that voluntarily quitting one's job for purely economic reasons is neither "necessitous" nor "compelling" under Section 8-1001. To the extent that this interpretation is inconsistent with *Gagne v. Potomac Talking Book Services, Inc.*, 374-BH-03, the Board overruled its prior precedent decision in *Gaskins v. UPS*, 1686-BR-00.

There must be a showing of something more connected with the conditions of the prior employment which motivated the claimant to quit his or her job to better employment to constitute a valid circumstance within the meaning of Section 8-1001. The Court of Appeals has stated, "Accepting more money and changing jobs is as much of a gamble and thus, as much of a personal matter as going in to business for oneself. In [the Court of Appeals'] view, it is unmistakably clear that Section 8-1001(a) was not designed to provide benefits when the precipitating cause for the voluntary leaving of employment was for higher pay or a better job. Instead, it was designed to prevent hardship to persons who lose their job "through no fault of their own." *Plein v. DLLR*, 369 Md. 421 (2002), quoting *Total Audio - Visual*.

In *Plein, supra*, the claimant was employed by Atlas Tile & Terrazo as a tile setter's helper at a job paying \$9.00 per hour. He accepted employment with Home Depot, U.S.A. as a sales associate in the floor and wall department. The Home Depot job paid \$12.00 per hour with the prospect of receiving, after a waiting period, a health insurance plan and stock purchase options and, after one year, two weeks vacation and sick leave. The claimant left his employment with Atlas and began working at Home Depot on August 14, 2000. On September 27, 2000, the claimant was laid off through no fault of his own. The Courts of Appeals found that the claimant was not entitled to unemployment benefits under the "necessitous or compelling" test of Section 8-1001 under its interpretation and under the authority of *Total Audio - Visual*, 360 Md. 387, 400-01, 758, A.2d 124, 131-32 (2000).

The Court explained in *Plein*, "In *Total Audio-Visual*, this Court, albeit, and perhaps significantly so, a sharply divided one, determined, and held that the General Assembly did not intend that a person who voluntarily terminates his or her otherwise satisfactory employment for other employment with better pay be eligible to receive unemployment benefits when laid off through no fault of his or her own by the subsequent employer."



In the instant case, the claimant quit his job to accept better employment for purely personal and economic reasons. These reasons cannot be good cause within the meaning of § 8-1001(b) or valid circumstances within the meaning of § 8-1001(c)(1)(i) as a matter of law. The Board finds insufficient evidence that the claimant demonstrated either necessitous or compelling reasons for quitting or that all reasonable alternatives were exhausted prior to quitting; therefore, a finding of valid circumstances within the meaning of § 8-1001(c)(1)(ii) is not supported.

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

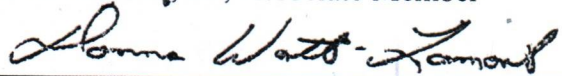
### DECISION

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 April 11, 2010 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.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

RD

Date of hearing: April 05, 2011

Copies mailed to:

DANNY T. CHRISTOFANO

TELLEN FOODS LLC

TERRY TRUSTY

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

DANNY T CHRISTOFANO

SSN #

**Claimant**

vs.

TELLEN FOODS, 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: 1030530

Appellant: Claimant

Local Office : 63 / CUMBERLAND  
CLAIM CENTER

October 07, 2010

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, ELLEN TRUSTY, TERRY TRUSTY

**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**

Danny T. Christophano (Claimant) worked for Tellen Foods, LLC (Employer) from October 1, 2009 to April 14, 2010, as a Vice President at a pay rate of \$1,000.00 per week.

The Employer, a spice packaging company, hired the Claimant to act as a "turnaround specialist," someone whose responsibilities included increasing the Employer's profit/revenue and expanding its business through the acquisition of new clients. (T.<sup>1</sup> Terry Trusty; Empl. Ex. 1.) At the time the Claimant was hired, he was aware that the Employer was experiencing some degree of financial difficulty. (T. Danny Christophano; T. Trusty; Clmt. Ex. 1, p. 1.)

<sup>1</sup> The abbreviation "T" stands for testimony.



Under the terms of the Claimant's employment contract, he received compensation from the Employer in the form of paychecks. On multiple occasions, the Claimant received a paycheck, but the funds were not available until two or three business days after the date on the check. In those instances, the Employer had to withdraw funds from the bank and pay the Claimant in cash. (T. Christophano.)

Through the Claimant's interaction with the Employer's clients and business partners, he became aware that the Employer had several outstanding debts, and was out of compliance with a number of its business contracts due to non-payment of fees and other financial obligations. (Clmt. Ex. 1.) As a result of the concerns related to the Employer's financial condition, the Claimant sought other employment.

On April 5, 2010, the Claimant resigned his position with the Employer after accepting a position as a regional vice president with another entity. (Empl. Ex. 3.)

### CONCLUSIONS OF LAW

Maryland Code Annotated, Labor and Employment Article, Section 8-1001 (2008) 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

In reaching this decision, I considered all available evidence, including the testimony of the Claimant and the Employer, as well as the exhibits offered by each party. Where evidence was in conflict, I decided the facts based on the evidence I deemed to be the most credible.

A claimant who resigns is ineligible for benefits unless the claimant can establish by a preponderance of the evidence that the resignation was for good cause or valid circumstances. In the case at bar, this burden has been met.

It must be noted that the Claimant did not dispute the Employer's assertion that the Claimant was hired as a "turnaround specialist," i.e., someone whose particular expertise was utilized specifically for the purpose of increasing/improving the Employer's financial circumstances. The Claimant conceded that he was aware that the Employer was experiencing financial difficulties at the time he was hired. He, however, argued that he was not aware of the *severity* of the financial difficulties until after he started working for the Employer. According to the Claimant, the Employer was in such dire financial straits that the Claimant was genuinely concerned that he would report to work one day to find the company headquarters shut down.

I find it difficult to believe that the Claimant was unaware of the full extent of the Employer's financial troubles at the time he was hired. The Claimant was hired to essentially, engage in financial course correction for the Employer. I find it is more likely than not that given the basis upon which the Claimant was hired – to help strengthen the Employer's financial profile – the Employer would have been completely candid with the Claimant about the full nature of its financial condition.



In other words, the Claimant could not help the Employer if he did not know the full extent of the problem he was hired to fix; it would be self-sabotaging of the Employer to hide the true nature of its financial condition from the Claimant. I find it more likely than not that the Claimant was aware of the Employer's financial condition at the time he was hired.

This finding does not, however, end my inquiry. Although the Employer argued that the Claimant ultimately received all the pay to which he was entitled, the Employer nevertheless conceded that on several occasions, the funds upon which the Claimant's paychecks were drawn were not available for his immediate use. The Employer acknowledged that on multiple occasions, it was necessary to withdraw money from the bank and pay the Claimant in cash, often a few days after the paycheck was issued.

If wages are not paid correctly and on time, the damage to an employee has already been done. Efforts to correct the situation are laudable (and legally required) but they have little effect on the issue of good cause unless an employer can show that the employee is being totally unreasonable. The timely and prompt payment of all wages due is one of the most basic obligations of an employer to an employee, and an employer's failure to meet this obligation constitutes good cause for leaving. Kimmell v. Dennis J. Smith, et al., 2065-BR-92.

In this case, there is no evidence that the Claimant was being unreasonable with regard to the payment of his wages. The Employer's failure to pay wages on time was to the Claimant's detriment, and it was reasonable for the Claimant to view the failure as a harbinger of trouble further down the line, and, as a result, to seek other employment.

## DECISION

IT IS HELD THAT the Claimant left the employment voluntarily but with good cause. Md. Code Ann., Labor & Empl. Article, Section 8-1001 (2008). No disqualification is imposed based upon this separation from employment with Tellen Foods, LLC. The Claimant is eligible for benefits so long as all other eligibility requirements of the law are met. The Claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at [ui@dllr.state.md.us](mailto: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 reversed.

*Latonya Dargan*

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Latonya Dargan  
Administrative Law Judge

### 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 22, 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: September 24, 2010  
BLP/Specialist ID: WCU2M  
Seq No: 001  
Copies mailed on October 07, 2010 to:

DANNY T. CHRISTOFANO  
TELLEN FOODS LLC  
LOCAL OFFICE #63