-DECISION-

Claimant:
ISHA K THOMAS

Employer:
ARC OF PRINCE GEORGES COUNTY INC, THE

Decision No.: 4597-BR-13

Date: January 10, 2014

Appeal No.: 1323767

S.S. No.:

L.O. No.: 61

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: February 10, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the following findings of fact and conclusions of law and reverses the hearing examiner's decision.

The claimant was granted leave under the *Family Medical Leave Act* (*FMLA*) to care for her husband in Sierra Leone who suffered a stroke while vacationing there. The claimant's *FMLA* leave was for twelve weeks. The claimant was expected to return to work the week of February 24, 2013. The claimant did not contact her employer after her FMLA leave expired. The claimant attempted to return to work on May 6, 2013. The employer held her

position for five months before filling it when they had no communication from the claimant.

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.

The Board finds sufficient evidence that the claimant, by her actions, manifested the intent to voluntarily quit her job by abandonment. The claimant's course of conduct supports a finding that she ignored her duty to keep her employer fully informed of her availability for work. When the claimant did not return to work upon the expiration of her FMLA leave of absence, did not apply for additional leave and had no further communication with her employer, the claimant effectively quit this employment without good cause or valid circumstances.

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 *Maryland Annotated, Labor & Employment Article, § 8-1001* The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

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 February 17, 2013 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.

Eileen M. Rehrmann, Associate Member

Donna Watts-Lamont, Chairperson

VD
Copies mailed to:
ISHA K. THOMAS
ARC OF PRINCE GEORGES COUNTY
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

ISHA K THOMAS

SSN #

Claimant

vs.

ARC OF PRINCE GEORGES COUNTY INC, THE

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: 1323767
Appellant: Claimant
Local Office : 61 / COLLEGE PARK CLAIM CENTER

September 13, 2013

For the Claimant: PRESENT

For the Employer: PRESENT, AUDREY WEAVER, BELINDA RAMNARINE

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, Isha Thomas, began working for this employer on or about November 27, 2001. At the time of separation, the claimant was working as a full-time certified nursing assistant (CNA), earning $11.74 per hour. The claimant last worked for the employer on or about November 29, 2012, before quitting under the following circumstances:

On November 26, 2012, the claimant's husband had a stroke while in Africa. The stroke left him unable to use his left side. (Cl Exh1). On November 27, 2012, the claimant notified the employer of her husband's medical condition. She requested and was granted leave under the Family Medical Leave Act (FMLA) which was in effect for 12 weeks. She was expected to return to work the week of February 24, 2013. She left for Africa and did not return until July 3, 2013 with her husband. The claimant was not leaving her

husband until he was strong enough to assist himself and travel.

Nonetheless, on May 6, 2013, based on her failure to return to work, the claimant was separated from employment.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 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 '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." 275 Md. at 79.

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.

Md. Code Ann., Labor & Emp. Article, Section 8-1001(c)(2) provides that an individual who leaves employment because of the health of the individual or another for whom the individual must care "shall submit a written statement or other documentary evidence of the health problem from a hospital or physician."

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner. The credible evidence shows that the claimant resigned from her job.

Therefore, claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit her position for reasons that constitute either good cause or valid circumstances pursuant to the Maryland Unemployment Insurance Law. Hargrove v. City of Baltimore, 2033-BH-83. In this case, this burden has been met.

The claimant's quit is due to her husband's medical condition. Therefore, her quit does not rise to good cause. However, the claimant presented medical records showing the severity of her husband's medical condition. She was unable to leave him in Africa. She was his care taker. For these reasons, the claimant's quit was for a compelling and nature reason. Therefore, her quit rises to a valid circumstance. Benefits are allowed after a penalty is imposed, and provided the claimant meets other provisions of the law.

DECISION

IT IS HELD THAT 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 November 25, 2013 and for the nine (9) 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.

C E Edmonds, 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

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision 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 September 30, 2013. 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 04, 2013
BLP/Specialist ID: WCP4B
Seq No: 003
Copies mailed on September 13, 2013 to:

ISHA K. THOMAS
ARC OF PRINCE GEORGES COUNTY
LOCAL OFFICE #61