

- DECISION -

Claimant:
GRACE L HASSANEIN

Decision No.: 4267-BR-13

Date: September 30, 2013

Appeal No.: 1321061

Employer:
OM SAI INC

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.

- 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: October 30, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact but reaches a different conclusion of law. The Board reverses 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 t

Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(2) specifically provides, "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 that health problem from a hospital or physician." If a claimant fails to provide medical evidence of alleged medical problems, neither good cause nor valid circumstances are supported. *See Davis v. Maryland Homes for the Handicapped, 25-BR-84*. Where a claimant has a chronic ailment, and where conditions in the workplace are such that healthy persons are usually not affected, the claimant's medical problem is not considered connected with the work. *Ortiz v. Trappe Packing Corporation, 924-BR-92*.

In the instant case, the claimant's own evidence does not support a finding that she was medically restricted from work after April 8, 2013. There is insufficient evidence that the claimant was advised by her physician to quit her job. The claimant's self-diagnosis is not enough to satisfy the evidentiary requirements under *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(2)*. The employer testified that the claimant performed good work. There was work available for the claimant had she not voluntarily quit. Therefore, the Board finds insufficient evidence to support a finding of good cause or valid circumstances.

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 April 7, 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.

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 August 29, 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: August 02, 2013
CH/Specialist ID: WCU3P
Seq No: 003
Copies mailed on August 14, 2013 to:
GRACE L. HASSANEIN
OM SAI INC
LOCAL OFFICE #63

UNEMPLOYMENT INSURANCE APPEALS DECISION

GRACE L HASSANEIN

SSN #

Claimant

vs.

OM SAI 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: 1321061
Appellant: Employer
Local Office : 63 / CUMBERLAND
CLAIM CENTER

August 14, 2013

For the Claimant: PRESENT

For the Employer: PRESENT , KAMLESH SONI

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, Grace L. Hassanein, began working for this employer, Om Sai, Inc., in October, 2012, and her last day worked was April 13, 2013. At the time of her separation, the claimant worked full-time as a Housekeeper, earning an hourly salary of \$7.50.

On April 5, 2013, claimant was seen by Mark Cotter, Physician Assistant for Paravertebral Muscle Spasm, Lumbar Sprain and Sciatica. On April 5, 2013, Mark Cotter, Physician Assistant, indicated that claimant could return to work on April 8, 2013. On April 13, 2013, claimant communicated with employer to discuss her medical condition and limitations. As of April 13, 2013, claimant's illness had not been

stabilized. On April 13, 2013, claimant made the decision to voluntarily quit her position to address her health issues. Although the claimant did not want to resign, she intended not to return to her regular position for an indefinable period.

The employer did not formally express any dissatisfaction with claimant's work. The employer did not discipline the claimant regarding the performance of her duties. The claimant's job was not in jeopardy at the time of her voluntary quit and continuing work was available.

CONCLUSIONS OF LAW

Maryland Code Annotated, Labor and Employment Article, § 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.

An illness that has no connection with the work may still be a valid circumstance if the illness is a necessitous or compelling reason to leave work, and there is no reasonable alternative to quitting. The claimant voluntarily resigned from his position due to a serious, documented medical reason. Pearson v. Coca Cola Bottling Company, 2040-BH-83.

Section 8-1001(c) (2) specifically 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 that health problem from a hospital or physician." Therefore, where the claimant fails to provide medical evidence of the health problem neither good cause nor valid circumstances are supported. Davis v. Maryland Homes for the Handicapped, 25-BR-84.

There is no requirement under Section 8-1001(c) (2) that the medical document state that the claimant's physician specifically advised her to quit the employment. Miles v. Patriarch, Inc. 1982-BR-93.

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 this case, the claimant met her burden.

The claimant has shown, by a preponderance of the credible evidence, that she voluntarily quit her position due to documented medical reasons. Since the claimant has not sufficiently established that her health problems were directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit, it cannot constitute good cause within the meaning of the Maryland Code Annotated, Labor and Employment Article, § 8-1001. It was, however, a cause of such a necessitous or compelling nature that she had no reasonable alternative but to resign to minimize/resolve her medical issues.

Accordingly, I hold that the claimant has demonstrated valid circumstances for her voluntary quit warranting the imposition of a weekly penalty.

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 Maryland Code Annotated, Labor and Employment Article, § 8-1001. The claimant is disqualified for the week beginning April 7, 2013 and for the four (4) weeks immediately following. The claimant will then be eligible for benefits in the event all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning other eligibility requirements at ui@dllr.state.md.us or telephone (410) 949-0022 from the Baltimore region, or (800) 827-4839 from outside the Baltimore region. Deaf claimants with TTY may contact Client Information Service at (410) 767-2727, or outside the Baltimore region at (800) 827-4400.

The determination of the Claims Specialist is reversed.



D F Camper, 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.

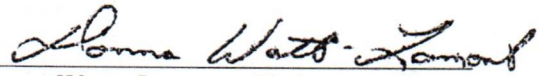
A request for waiver of recovery of overpayment does not act as an appeal of this decision.

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.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

GRACE L. HASSANEIN

OM SAI INC

Susan Bass, Office of the Assistant Secretary