

- DECISION -

Claimant:
ADVIN ILLA MEDINA

Employer:
ZAYTINYA RESTAURANT

Decision No.: 6076-BR-11
Date: October 21, 2011
Appeal No.: 1127662
S.S. No.:
L.O. No.: 62
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: November 21, 2011

REVIEW ON THE RECORD

After a review on the record, after deleting "or about" from the first and third sentences of the first paragraph and substituting "in", and after correcting the claimant's separation date to "November 6, 2010", the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

The claimant had recently returned from active duty with the U. S. Military, serving in Iraq. He quickly found the noises and crowded conditions at the employer's place of business to be very difficult to tolerate. These conditions reminded him of many of the negative things he had experienced in the war in Iraq and he became increasingly uncomfortable. The

claimant did not discuss this with his employer because he realized that the employer could not change these conditions in its restaurant.

The Board concludes that the facts, as modified and supplemented, warrant different conclusions of law and a reversal of 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 09.32.06.02(E)*.

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*. 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 (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 (1985)*; also see *Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984)*. 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 (1985)*.

"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. 250(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)*.

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.

In his appeal, the claimant reiterates his testimony from the hearing. He contends, and the Board agrees, that the hearing examiner did not afford him "...the chance to explain in full detail." However, the Board finds that the claimant's testimony was sufficient to show that he had valid circumstances for his decision to leave this employment and, therefore, the Board will reverse the hearing examiner's decision rather than remand this matter for a new hearing.

The claimant's uncontradicted testimony establishes that he began this employment shortly after he returned from active military service in the Iraq War. The claimant soon became upset with the level of noise and the crowded conditions inside the employer's restaurant. He had difficulty coping with this because it reminded him of his recent experiences in Iraq. The claimant concluded that it was necessary for him to leave this establishment and seek other, quieter, less crowded employment conditions.

Generally, a claimant must show that he has attempted to mitigate the negative working conditions prior to quitting employment in order to establish valid circumstances. However, when it is clear that the problems cannot be resolved, the need to address the grievances with the employer is negated. Here, the employer is a busy restaurant. It would be contrary to the employer's interests to expect it to reduce the size of its crowds. It also would be highly unlikely that the employer could reduce the noise level. Those are conditions inherent in a busy restaurant and, from a practical standpoint, the employer could not have helped the claimant had he asked or had it tried.

The Board concludes that the claimant has demonstrated that he had valid circumstances for his decision to leave this employment.

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 his burden of demonstrating that he quit this employment for good cause. However the claimant has met his burden and established that he had valid circumstances within the meaning of § 8-1001 for quitting this employment. The claimant is disqualified from benefits for the week beginning October 31, 2010, and for the next four weeks thereafter. The decision shall be reversed for the reasons stated herein.

The employer, provided that the employer has not elected to be a reimbursing employer pursuant to Md. Code Ann., Lab. & Empl. Art., §8-616, et seq., should note that any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. See Md. Code Ann., Lab. & Empl. Art., § 8-611(e)(1).

DECISION

It is held that the claimant left work voluntarily, without good cause but for 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 October 31, 2010 and the four weeks immediately following.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

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Susan Bass, Office of the Assistant Secretary