

- DECISION -

Claimant:
KAYANN MCCALLA

Decision No.: 925-BR-15

Date: April 15, 2015

Appeal No.: 1418819

S.S. No.:

Employer:
MONTGOMERY CHILD CARE ASSN INC

L.O. No.: 61

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: May 15, 2015

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on October 20, 2014. That Decision held that the claimant had voluntarily quit her employment, without good cause or valid circumstances, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. Benefits were not allowed for the week beginning June 15, 2014, and until the claimant has become reemployed, earned at least fifteen (15) times her weekly benefit amount, and become separated from that employment under non-disqualifying conditions.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's 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. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

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)*.

Because the reopening issue has previously been resolved in the appellant's favor, that issue shall not re-adjudicated here.

In this case, the Board has thoroughly reviewed the record from the Lower Appeals hearing. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered the opportunity to present closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing, to take additional evidence, to conduct its own hearing, or allow additional argument.

The Board finds the hearing examiner's Findings of Fact are supported by substantial evidence in the record. Those facts are sufficient to support the hearing examiner's Decision. The Board adopts the hearing examiner's findings of fact and conclusions of law.

Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001, 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 valid circumstance for voluntarily leaving work is a substantial cause 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. To establish a valid circumstance for leaving one's employment, a claimant is expected to have attempted to adjust the grievance, or explored other options, prior to leaving unless such action would have been futile or fruitless.

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)*.

In her appeal, the claimant asserts that the evidence presented shows that there was good cause for the claimant to voluntarily quit her position. In the instant case, both parties presented opposing views as to what transpired. Both parties presented witness testimony that is found to be of equal weight with that of the opposing witness. As such, the evidence is found to be in equipoise. Since the burden of proof to prove the case by a preponderance of the credible evidence rests with the claimant, it must be found that the claimant failed to meet her burden.

The claimant submitted her resignation to be effective in 30 days. The employer responded by accelerating her resignation effective June 17, 2014. In a similar case where the claimant gave two weeks notice and the employer accelerated the claimant’s leaving to be effective immediately, the penalty under § 8-1001 does not commence until two weeks after the separation from employment. *Stefan v. Levenson and Klein, 1794-BR-82*.

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 that the employer accelerated the claimant’s resignation date from July 18, 2014 to June 17, 2014. The claimant is eligible for benefits beginning the week of June 15, 2014 and ending the week of July 13, 2014

Furthermore, the Board finds, based upon a preponderance of the credible evidence, that the claimant did not meet her burden of proof and show that she quit this employment with good cause or valid circumstances within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The decision shall be modified for the reasons stated herein and in the hearing examiner's decision.

DECISION

The Board finds that the employer accelerated the claimant's resignation from July 18, 2014 to June 17, 2014. The claimant is eligible beginning the week of June 15, 2014 and ending the week of July 13, 2014.

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 July 20, 2014 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 Modified.



Eileen M. Rehrmann, Associate Member



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

KAYANN MCCALLA
MONTGOMERY CHILD CARE ASSN INC
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

KAYANN MCCALLA

SSN #

Claimant

Vs.

MONTGOMERY CHILD CARE ASSN 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: 1418819
Appellant: Claimant
Local Office : 61 / COLLEGE PARK
CLAIM CENTER

October 20, 2014

For the Claimant: PRESENT

For the Employer: PRESENT, IVA DEMIXHIU, VANESSA STEWART

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, Kayann McCalla, began working for Montgomery childcare ASSN INC on or about November 1, 2013. At the time of separation, the claimant was working as a teacher, making \$16.00 an hour. The claimant last worked for the employer on or about June 17, 2014.

The claimant had allegedly witnessed a colleague named Emily, who was a director at the center; remove a child from away from a group and then leaving her alone in a classroom on March 11, 2014. A few minutes later Emily returned the child to the playground, stating that the child had been left behind. The claimant reported this incident to the human resources director on March 19, 2014.

When the claimant noted that no action was undertaken by the center to address her report, the claimant reported suspected child abuse or neglect by a fellow teacher to the Maryland Child Protective Services and to the Maryland Department of Education, Child Care Licensing Division on April 18, 2014.

The relationship between the employer and the claimant deteriorated thereafter. The claimant was reported to have physically and inappropriately handled a child on May 14, 2014 when she allegedly held the face of a child with two hands because he was not looking at her. The claimant was further cited for allegedly holding another child's hands down on a table when distributing snacks on May 15, 2014. She was not terminated for these alleged infractions.

When the claimant was called into a meeting with the Center director on June 16, 2014 to discuss how to create a better working environment, the claimant reacted by deciding to resign, as she felt that her reputation would suffer if she remained employed. She did not agree with the allegations concerning the May 15, 2014 incidents and did not feel supported.

The claimant gave the employer 30 days' notice. The employer responded by accelerating her resignation effective June 17, 2014. (Claimant's Exhibit No. 1, Employer's Exhibit No. 1)

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.

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 claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit his 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 not been met.

The credible testimony and evidence established that the claimant resigned on June 16, 2014, as she did not feel supported after receiving two complaints of alleged mishandling of children in her care.

Both parties alleged they each engaged in inappropriate interactions with children. The claimant reported Emily to authorities for allegedly removing a child from a group and then reporting the child as having been left behind. The claimant took 8 days to report the matter to human resources and a month and 8 days to report the incident to authorities. It is noted that despite the claimant's frustrations with this alleged incident, and the lack of prompt response from the employer, the claimant remained on the job.

The employer alleged that the claimant mishandled two children on May 15, 2014, but let the claimant remain employed; she was not terminated. It is found that neither party established that any of the incidents occurred, as alleged, in the hearing. It is further noted that all three of these incidents did not result in any party deciding to sever the working relationship.

The claimant quit during a meeting that was called to foster a more positive working environment. While the claimant may have felt that quitting would enhance her reputation, or salvage it, she did not establish that she quit due to the actions of the employment unit or for reasons rising to the level of good cause or valid circumstances.

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 June 15, 2014 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 Specialist is modified.



W. Rosselli, 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 November 5, 2014. 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: October 02, 2014

AEH/Specialist ID: WCP1A

Seq No: 004

Copies mailed on October 20, 2014 to:

KAYANN MCCALLA
MONTGOMERY CHILD CARE ASSN INC
LOCAL OFFICE #61