

- DECISION -

Claimant:
EDISON T JOHNSON

Decision No.: 3098-BR-14

Date: March 25, 2015

Appeal No.: 1419296

S.S. No.:

Employer:
EAST COAST UNDERGROUND INC

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: April 24, 2015

REVIEW OF THE RECORD

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on September 9, 2014. That Decision held that the claimant had voluntarily quit his 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 May 18, 2014, and until the claimant has become reemployed, earned at least fifteen (15) times his 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)*.

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.

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 began working as a full time yardman for East Coast Underground, on November 11, 2013 until his voluntary quit on May 19, 2014.

The claimant quit this employment on "moral principles" because he believed was not paid for additional hours that the claimant asserted that he had worked. The employer is a subcontractor for a utility company. The Utility Company and employer have a policy that employees do not work in the rain. On rainy days, the employer is only paid by the contractor for two hours of show up time. In turn, employees are paid for two hours of show up time. The claimant agreed that he was aware of the policy.

On the day in question, the claimant was outside unloading a truck and asserts that no one told him to leave. When the claimant returned to the warehouse, the supervisor and crew had left. Only a mechanic was working. The claimant asked the mechanic if there any instructions for the claimant to leave. The mechanic had not received any instructions for the claimant so the claimant continued to work.

When the claimant's paycheck arrived on May 6, 2014, the claimant felt that he was only paid for four hours, and the check was short the additional hours that the claimant alleged he worked. The foreman advised the claimant that he would look into the matter. The

foreman reviewed the surveillance tapes to see if the claimant was working. The foreman did not see the claimant working. The foreman, however, told the claimant that he would check with the owner to see what could be worked out. The claimant quit this employment on May 15, 2014 before the foreman had an opportunity to discuss the matter with the owner.

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 the employer's appeal, the employer asserts that the claimant was specifically told by the office manager to stop working due to weather conditions.

Based on the credible evidence it is undisputed that the claimant knew the employer's policy of not working in the rain. Yet, the claimant continued to work in the rain. The claimant did not pursue reasonable alternatives to quitting when he was advised that the foreman would talk to the owner to see if something could be worked out and, instead, the claimant quit.

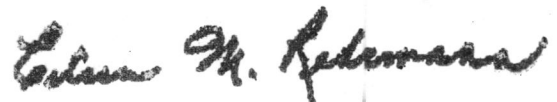
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds, based upon a preponderance of the credible evidence, that the claimant did not meet his burden of proof and show that he 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 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 May 18, 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 Reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

EDISON T. JOHNSON

EAST COAST UNDERGROUND INC

HEIDI FELLON

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

EDISON T JOHNSON

SSN #

Claimant

vs.

EAST COAST UNDERGROUND 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: 1419296

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

September 09, 2014

For the Claimant: PRESENT

For the Employer: PRESENT , KEN HILL, LISA SHANAHAN

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, Edison Johnson, began working for this employer, East Coast Underground, on November 11, 2013, and his last day worked was May 19, 2014. At the time of his voluntary quit, the claimant worked full-time as a yardman.

The claimant resigned his position because of a disagreement with the employer over his wages. The employer periodically received notice from the client to stop work due to rain. On these occasions, the staff was notified, and the office closed early. At times, the foreman would ask the claimant to work additional hours when the other staff left even though the office was closed.

On April 29, 2014, the employer was notified to cease work due to rain, and the coordinator advised the staff of the situation. The claimant was unloading a truck at the time and when he returned to the warehouse, he noticed the rest of the staff had left for the day. The claimant asked the mechanic if the owner instructed him to leave for the day. Since the mechanic was not specifically instructed to send the claimant home, the claimant continued to work in the warehouse. The foreman had left earlier with the other staff members, and was not informed that the claimant continued working.

When the claimant received his paycheck he discovered he had not been paid for the additional hours he worked after the rest of the staff had left for the day. On May 2, 2014, the claimant asked the foreman why he had not been paid for the additional time he worked, and the foreman told him that he was only approved to work for four hours. The foreman advised the claimant he would check into the matter. The foremen discussed the situation with the vice president, but there was no evidence the claimant worked additional hours that day. When the claimant still did not receive payment for the additional hours he worked, he resigned his position on May 19, 2014.

CONCLUSIONS OF LAW

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.

The claimant voluntarily quit for a substantial cause, connected with the work, which is one of the definitions of valid circumstances. Smith v. Lourn M. Boyce, Sr., 135-BR-93.

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 credible evidence, he voluntarily quit his 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 the case at bar, the claimant met this burden.

The claimant testified he worked additional hours, and was not paid for the time he worked. The employer provided testimony alleging the claimant did not work the additional hours. The testimony shows there was confusion about the hours the claimant actually worked. The claimant should have made an effort to clear up the confusion before he resigned his position, and therefore, he has not shown good cause. However, the credible evidence shows the claimant worked additional hours, and resigned from for a substantial cause connected with the work. Therefore, a finding of valid circumstances is warranted. Accordingly, I hold the claimant met his burden in this case and the claimant's voluntary quit was due to a valid circumstance, 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 Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning May 18, 2014 and for the 4 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.



E K Stosur, 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 24, 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: September 03, 2014
CH/Specialist ID: WCU42
Seq No: 001
Copies mailed on September 09, 2014 to:

EDISON T. JOHNSON
EAST COAST UNDERGROUND INC
LOCAL OFFICE #63