

- DECISION -

Claimant:
TAMMY L GARY

Decision No.: 4265-BR-13
Date: September 30, 2013

Appeal No.: 1318848

S.S. No.:

Employer:
NASHEDS PA

L.O. No.: 63

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: October 30, 2013

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact but finds that they warrant a different conclusion of law. The Board also finds the following additional findings of fact.

The claimant's job duties chronically increased through the last day of employment. Additional job duties outside the claimant's job description were assigned to the claimant over the course of time to the point where the claimant had to work additional hours. Notwithstanding the claimant's input and complaints, the employer did not change the claimant's conditions of employment or accommodate the claimant in any other manner.

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.

A substantial detrimental change in working conditions can constitute good cause for voluntarily quitting employment. *See Rockstroh v. Brocatto's Restaurant, 54-BH-86; Johnson v. Gladenia, Inc., 702-BR-91; Brown v. James Jenkins, Jr., 1890-BR-92*. A substantial change in the agreed-upon hours of employment may constitute good cause, *DiBartolemeo v. Yaffe and Company of Baltimore, Inc., 1089-BH-89, Heavner v. Auto Trader Company, 195-BR-90, Phillip s v. Loughlin Security Agency, Inc., 2116-BH-92*, or valid circumstances if for compelling personal reasons, *Johnson v. Direct Housekeeping, 183-BR-86*.

In the instant case, the weight of the credible evidence supports a finding that the claimant's job was materially and detrimentally changed when she was assigned additional duties and an increased workload. The Board is persuaded that the claimant's working conditions detrimentally changed to the point of unreasonableness at the end of her tenure with the employer. The claimant's work hours necessarily increased as the result of the changed work conditions. The claimant gave the employer input on how to operate the office with better efficiency and complained of her detrimental working conditions. Notwithstanding, the claimant's working conditions did not change; in fact, they became worse. The Board finds that the claimant voluntarily quit due to detrimental conditions directly attributable to the employment. Because there was no higher authority to whom the claimant could complain and applying the objective test, the Board finds that the claimant had no other alternative other than to quit.

The Board disagrees with the hearing examiner's conclusion that only valid circumstances are supported in this case. The employer, duly notified of the date, time and place of the hearing, failed to appear to present any mitigating evidence. The Board finds the claimant's testimony credible and un-rebutted.

In the appeal to the Board, the claimant argues that she has paid taxes to the State for years and has not asked for State assistance. The claimant should note that employers, not employees, pay tax contributions into the unemployment insurance trust fund. *Md. Code Ann., Lab. & Empl. Art., § 8-607*.

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 met her burden of demonstrating that she quit for good cause within the meaning of § 8-1001. The hearing examiner's decision shall be modified for the reasons stated herein.

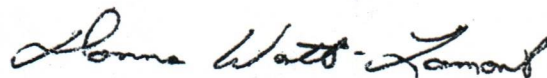
DECISION

It is held that the claimant voluntarily quit, but for good cause connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8 Section 1001. No disqualification is imposed based upon the claimant's separation from employment with NASHEDS PA.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

TAMMY L. GARY

NASHEDS PA

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TAMMY L GARY

SSN #

Claimant

vs.

NASHEDS PA

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: 1318848

Appellant: Claimant

Local Office : 63 / CUMBERLAND
CLAIM CENTER

August 12, 2013

For the Claimant: PRESENT

For the Employer:

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, Tammy L. Gary, began working for this employer, Nasheds PA, on May 20, 2002. At the time of separation, the claimant was working full-time as a medical biller. The claimant last worked for the employer on April 8, 2013, before voluntarily quitting when she could not handle the workload anymore and also due to stress.

The claimant was responsible for billing in the office. In August 2012, the employer went from a manual fee slip system to an electronic medical billing system. However, no training was provided for the office to work this system. From its inception, the program had problems and the office had difficulty using the program. On the day the new biller was implemented, the other biller's hours were cut to part-time which placed more billing responsibility on the claimant. The claimant was also charged with doing the billing for

the owner's wife. The owner's wife was a psychologist with her own company. However, the claimant was leased to do the wife's billing for her practice during the time she worked for the owner. Due to problems with the billing program, this increased the claimant's workload even further. Because the nurses and the doctor's charges were not crossing over to be processed for billing, the claimant was unable to correctly process the billing. The billing was either not going out correctly or not at all. The claimant brought her concerns to the owner. The claimant's work space was located in the break room near to the bathroom. The claimant faced constant interruptions from those coming in and out of the break room. The claimant could not move her space because her computer was located in the break room. The claimant was frequently interrupted to address patient questions about billing. In March 2013, due to the billing program problems, the owner required the claimant to print out a schedule of all patients seen in the office on a given day, and then look up every patient in the billing system to see what procedure code had been completed on them. Upon doing that, the claimant was required to bring that information over to her billing side to process the billing. That task alone added a minimum of three hours to her day. The claimant generally worked 7 to 7.5 hours per day. That time was necessary to just enter charges. The claimant quickly found herself not able to accomplish her work in the time allotted to her. Also in March, the receptionist began posting and entering money into the system, and this was also not done correctly. Money was getting lost due to it not being inputted correctly. This also led to the claimant having to figure out where the money went and then balance the work they did. About this time, an insurance company, United Health, began denying the doctor's claims indicating that he was coding higher than necessary. The task of appealing the claims fell on the claimant. This also was a time consuming process. The claimant was not getting any cooperation from the doctor or the office in general. The claimant was dealing with the stress of the job and the excessive workload began taking a toll on the claimant. The claimant billed for two offices. Due to constantly changing receptionists, the claimant was charged with finding mistakes made by the receptionists, showing them their mistakes, and then giving the issues to the doctor. The issues would then be corrected by the receptionists, given back to the doctor, and then given back to the claimant. This was done for verifications. That whole process could take a week. The claimant was charged with doing a number of these daily. This process also caused conflict in the office because receptionists felt the claimant was indicating that they were not doing their jobs. With the problems and the workload mounting up, and the claimant not getting any help, the claimant made the decision to voluntarily quit her job effective April 8, 2013.

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.

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.

To establish good cause, the claimant must show that the cause for leaving is directly attributable to, arising from or connected with the conditions of the employment or the actions of the employer. Purely personal reasons, no matter how compelling they may be, cannot constitute good cause. Board of Education of Montgomery County v. Paynter, 303 Md. 22, 491 A.2d 1186 (1985).

When the reason for leaving is due to the conditions of employment, the standard for determining whether valid circumstances exist is set out in Section 8-1001(c)(1)(i). Under that standard, valid circumstances exist where the reason for leaving was “a substantial cause” connected with the conditions of employment. The “necessitous or compelling” standard is the standard which should be applied when the reason for leaving the job was for personal reasons, under Section 8-1001(c)(1)(ii). Wilson v. Vincent A. Butler and Associates, Inc., 1691-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 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 voluntarily quit because she could no longer handle the workload which continued to increase. The claimant credibly testified that the owner continued to increase her workload and responsibilities to the point that she could not possibly complete her daily tasks. Along with her general billing duties, the claimant was charged with finding mistakes others were making and correct their mistakes before she could do her job. Neither the claimant nor the office in general was given any proper training on the new billing system that was implemented. This was the primary issue which led to a lot of the billing and coding problems. At the last, the claimant was charged with finding the errors committed by the receptionists and making them aware of the problems, then wait almost a week to get the work back so she could complete her work. The claimant raised complaints about the mounting workload. She was given no help. The claimant's reason for leaving was a substantial cause connected with the conditions of employment. The claimant's voluntary quit was for valid circumstances.

I hold the claimant's voluntary quit was without good cause, but for valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1001 pursuant to this separation from this employment. Benefits will be allowed after the claimant serves 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 April 7, 2013, and for the four (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.



W E Greer, 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 August 27, 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: July 15, 2013

BLP/Specialist ID: WCU5U

Seq No: 001

Copies mailed on August 12, 2013 to:

TAMMY L. GARY

NASHEDS PA

LOCAL OFFICE #63