

-DECISION-

Claimant:
AMMIE L HASSELL

Decision No.: 622-BH-12

Date: February 17, 2012

Appeal No.: 1112476

Employer:
REILY LLC

S.S. No.:

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: March 19, 2012

- APPEARANCES -

FOR THE CLAIMANT:

AMMIE L. HASSELL

FOR THE EMPLOYER:

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Labor, Licensing and Regulation's documents in the appeal file.

The employer and the Agency, duly notified of the date, time and place of the hearing, failed to appear. The Board finds the claimant's testimony consistent and credible.

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)*.

The Board has reviewed the record and considered the claimant's additional testimony at the hearing before the Board. The Board is persuaded by the weight of the credible evidence that the claimant was paid less than the mandated minimum wage. The claimant's wages were reduced because the claimant's hours were "rounded down" to the nearest hour; the employer, without authorization from the claimant, deducted alleged expenses from the claimant's wages; and the claimant did not receive the tips attributed to her and deducted from her pay for federal tax purposes. The Board is persuaded that the claimant's reasons for leaving work were directly attributable to the conditions of employment.

FINDINGS OF FACT

The claimant was employed as a part-time bartender from August 9, 2010 through March 2, 2011. The claimant is unemployed as the result of a voluntary quit.

Over the course of the claimant's employment, the claimant was paid \$3.63 per hour plus tips. The claimant's tips never equaled or exceeded the mandatory minimum wage. The employer would inventory the bar on a daily basis. If there were beers missing from the stock, the employer would deduct the retail cost of the beer from the claimant's check without regard to whether the claimant actually misappropriated the beer. The claimant did not give the employer written authorization to deduct any expenses from her paycheck.

The claimant's hours were "rounded down". If the claimant worked 7½ hours, the claimant would be paid for 7 hours at \$3.63 per hour. The claimant did not "punch a time clock"; the owner would record the claimant's hours. The owner inaccurately recorded the claimant's hours to her detriment.

The claimant would not receive tips that, when combined with her \$3.63 per hour, would equal or exceed the minimum wage. As a result, the claimant voluntarily quit her employment.

CONCLUSIONS OF LAW

“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.

The Board finds the weight of the evidence supports a finding that the claimant voluntarily quit her job for good cause. Employers are required to pay employees at least the minimum wage. *Md. Code Ann., Lab. & Empl. Art., §3-413; Md. Code Ann., Lab. & Empl. Art., § 3-428(a)(1)*. An employer may not make a deduction from an employees wages any expense unless ordered by a court of competent jurisdiction, authorized expressly in writing by the employee, allowed by the Labor Commissioner because the employee has received full consideration for the deduction or otherwise made in accordance with any law or any rule or regulation issued by a government unit. *Md. Code Ann., Lab. & Empl. Art., § 3-503*.

In the instant case, the claimant was not paid the minimum wage, had unauthorized deductions taken from her pay and was not paid for all hours actually worked. These were conditions detrimental to the claimant's proper employment and constitute good cause for quitting.

The Board notes that the hearing examiner and the Board 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 decision shall be reversed for the reasons stated herein. Benefits are allowed provided the claimant meets the other requirements of the law.

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 REILY, LLC.

The Hearing Examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

RD

Date of hearing: January 31, 2012

Copies mailed to:

AMMIE L. HASSELL

REILY LLC

BRUNOS

Susan Bass, Office of the Assistant Secretary