

- DECISION -

Claimant:
AMY M BROWN

Decision No.: 752-BR-15

Date: April 1, 2015

Appeal No.: 1420907

S.S. No.:

Employer:
BAYADA NURSES INC
ATTN CCP

L.O. No.: 64

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 1, 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 16, 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 January 19, 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.

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.

The Board notes a technical error in the exhibits in evidence. The email from Julie Hoffman to Amy Brown dated January 24, 2014 8:19 AM should be marked as Claimant's Exhibit #3.

The Board finds the hearing examiner's Findings of Fact are not supported by substantial evidence in the record. The Board rejects those Facts and substitutes its own Findings of Fact:

The claimant worked as a part time registered nurse from February 13, 2012 until January 24, 2014.

The claimant was required to submit documentation for her hours of work. On some occasions, the claimant was late in her submittals and there was a reasonable delay in the payment for the work performed.

The claimant observed that she was not being paid accurately and that her paychecks were short of the monies that she should have been paid for the work performed. The claimant brought the problem to her clinical manager and was assured that the problem would be remedied. However, the pay problems persisted.

Then, the claimant brought the problem of timely and accurate pay to the attention of other employees in the payroll division, that she believed were the right persons to contact. The

claimant, again, was assured that the problems with her pay would be fixed. Despite their assurances that the claimant's pay would be accurate, the problem continued. There were several paychecks that were deficit in payment for the claimant's services. As a result, the claimant resigned.

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 claimant's representative's appeal to the board, the representative argued that the claimant's employer failed to pay the claimant accurately and on time; therefore, the claimant qualifies "as an individual who has been identified by the courts as having good cause for quitting on the basis that the employer has failed to pay the owed remuneration in a timely fashion. The Board concurs with representative's argument. The obligations of the employment contract are reciprocal. While the employee has the obligation to work diligently and in good faith for the employer, the employer has an obligation to pay the remuneration agreed upon in a timely manner. A failure of the employer to do so is a substantial breach of the employment obligation and constitutes good cause to quit. *Quina v. Marlo Furniture Company, Inc.*, 1121-BR-90.

There were occasions when the claimant was at fault when she was late in entering the data for the work performed. However, both the employer and claimant agree that the claimant had not been paid for 15 visits. The employer argued that the claimant never discussed the pay problems with the Clinical Director who met with the claimant on other matters. The evidence shows, however, that the claimant brought her pay problems to the attention of employees in payroll who she believed were the proper personnel to contact. The pay problems persisted.

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 meet her burden of proof and show that she quit this employment with good cause within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1001*. The decision shall be reversed for the reasons stated herein.

DECISION

The Board holds that the claimant voluntarily quit this employment with good cause within the meaning of *Md. Code Ann., Lab. and Empl. Art., Title 8, Section 1001*. The claimant is allowed benefits from the week beginning October 16, 2014, if the claimant is otherwise eligible.

The Hearing Examiner's decision is Reversed.



Eileen M. Rehrmann, Associate Member



Clayton A. Mitchell, Sr., Associate Member

VD

Copies mailed to:

AMY M. BROWN

BAYADA NURSES INC

D. H. ANDREAS LUNDSTEDT ESQ.

BAYADA NURSES INC

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

AMY M BROWN

SSN #

Claimant

vs.

BAYADA NURSES INC
ATTN CCP

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: 1420907
Appellant: Claimant
Local Office : 64 / BALTOMETRO
CALL CENTER

October 16, 2014

For the Claimant: PRESENT, ANDREW LUNDSTEDT, ESQ.

For the Employer: PRESENT, KIM YOUNG, CONNIE HRAPLA, JO-ANN SAXBY

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, Amy Brown, began working for this employer, Bayada Nurses Inc. on February 13, 2012. At the time of separation, the claimant was working as a registered nurse. The claimant last worked for the employer on January 24, 2014 when she quit.

The claimant quit because she was not paid for all the hours that she worked. This was a problem that occurred several times over the course of the claimant's employment. In each instance, she was not paid because she failed to submit the required documentation to show the hours she worked in a timely manner. When the claimant was not paid for all the hours she worked, she contacted the payroll department who informed her that she would be paid on the following paycheck. The claimant was not paid on the

following paycheck but she did not take any further steps to inform the employer that she was not being properly paid. She then quit without discussing the issue of her pay with the director of nursing or informing the payroll department that problem had not been resolved.

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.

If wages are not paid correctly and on time, the damage to the employee has already been done. Efforts to correct the situation are laudable (and legally required) but they have little effect on the issue of good cause unless an employer can show that the employee is being totally unreasonable. The timely and prompt payment of all wages due is one of the most basic obligations of an employer to an employee, and an employer's failure to meet this obligation constitutes good cause for leaving. Kimmell v. Dennis J. Smith, et al., 2065-BR-92.

The obligations of the employment contract are reciprocal. While the employee has the obligation to work diligently and in good faith for the employer, the employer has an obligation to pay the remuneration agreed upon in a timely manner. A failure of the employer to do so is a substantial breach of the employment obligation and constitutes good cause to quit. Quina v. Marlo Furniture Company, Inc., 1121-BR-92.

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 the reasons for the voluntary quit from the position with the employer of record 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 claimant quit this job because she was not paid for all the hours she worked. Normally this would be good cause to quit a job. However, in this case the claimant was the party at fault for the lack of payment.

The claimant did not submit the necessary documentation to the employer in a timely manner for her to be paid properly. As such, the employer should not be held responsible for the claimant not getting paid on time. After the claimant was not paid on time, she did not tell the employer that she was not paid on the next paycheck. She did not take any further steps to resolve the situation, she did not inform the payroll department that she had not received the pay for the hours she had neglected to report in a timely manner and she did not elevate the problem to the director of nursing. In effect, the claimant did not notify the employer that there was a problem with her pay after she caused the original delay in payment. As she created the initial problem it would be unjust to hold the employer responsible when the claimant did not inform the employer that the problem she created persisted past the first pay period. This is what differentiates this case from the Board of Appeals cases such as Quina supra. The claimant is the party that created the problem and when the problem was not resolved, she did not take any steps to even inform the employer of this fact. She was being totally unreasonable when she failed to inform the employer that the problem she created was not resolved. See Kimmell supra. As such, she had neither good cause nor valid circumstances to quit this job and benefits will be denied.

It is thus determined that the claimant has concurrently failed to demonstrate that the reason for quitting rises to the level necessary to show good cause or valid circumstances within the meaning of the sections of law cited above.

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 January 19, 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 affirmed.

S. Weber

S Weber, 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 to Petition for Review

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a review 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 October 31, 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 06, 2014
DAH/Specialist ID: RWD2E
Seq No: 001
Copies mailed on October 16, 2014 to:

AMY M. BROWN
BAYADA NURSES INC
LOCAL OFFICE #64
ANDREW LUNDSTEDT ESQ.