

- DECISION -

Claimant:
TEIANA BOYD

Decision No.: 2274-BR-14

Date: September 10, 2014

Appeal No.: 1409432

S.S. No.:

Employer:
A P WOODSON COMPANY

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 10 , 2014

REVIEW OF THE RECORD

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 worked as a fulltime customer service representative from July 16, 2012 until March 21, 2014, earning \$15.50 per hour.

As a condition of employment when the claimant was hired, the employer agreed to accommodate her graduate school schedule so that she could attend classes on Tuesdays

and Thursdays to secure her graduate degree. The claimant was to work Monday, Wednesday, Friday and Saturday.

In March 2014, the employer was changing some of the customer services work schedules due to seasonal changes in their work flow. A new supervisor was assigned to the claimant. The claimant's direct supervisor informed the claimant that she would be required to work Tuesdays and Thursdays. The claimant explained to her supervisor that she was in the middle of the semester and she could not work those two days. If the claimant was unable to attend the classes she would fail those classes and lose her graduate school scholarship. The claimant's supervisor advised the claimant that the employer would no longer honor the accommodation.

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.

In the instant case, the claimant quit her job because her employer required her to work on the two days she needed to attend graduate school. Prior to hiring, the employer agreed to accommodate the claimant's need to be off on these two days.

In a similar case, a substantial change in the working conditions to the detriment of an employee was found to constitute good cause for voluntarily leaving under § 8-1001. When the employer made substantial changes in the claimant's job requirements, the claimant, recognizing that she could not comply with these changes, voluntarily submitted her resignation. Specifically, prior to her hiring, the claimant had reached an agreement with the employer about her flex-time hours. The revocation of these hours was a significant and detrimental change in the contract of employment on part of the employer. The claimant quit for good cause. *DiBartolomeo v. Yaffe and Company of Baltimore, Inc.*, 1089-BR-90.

In the instant case, the Board finds that the employer made a significant and detrimental change in the contract of employment on the part of the employer. The claimant voluntarily quit for good cause.

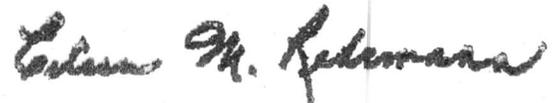
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

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 *Maryland Annotated, Labor & Employment Article, § 8-1001*. The decision of the hearing examiner shall be reversed for the reasons stated herein.

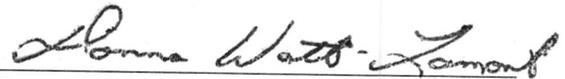
DECISION

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 A P WOODSON COMPANY

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

TEIANA BOYD

A P WOODSON COMPANY

ANDREW M. DANSICKER ESQ.

A P WOODSON COMPANY

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

TEIANA BOYD

SSN #

Claimant

vs.

A P WOODSON COMPANY

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: 1409432

Appellant: Claimant

Local Office : 63 / CUMBERLAND

CLAIM CENTER

May 09, 2014

For the Claimant: PRESENT, ANDREW M. DANSICKER, ESQ.

For the Employer: PRESENT, ERIC SCHMIDER, WILLIAM BOMEIER

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, Teiana Boyd, worked for the above captioned employer, AP Woodson Company, from July 16, 2012 until March 21, 2014 as a full time customer service representative earning \$15.50 per hour. The claimant voluntarily quit her position because she was unhappy with a proposed schedule change.

The claimant attends graduate classes at Towson University on Tuesdays and Thursdays for which the employer granted her a schedule accommodation: she worked Monday, Wednesday, Friday and Saturday shifts for 10 hours or 8 hours as needed. Eric Schmider, one of her supervisors, offers that the employer was committed to assisting the claimant earn her graduate degree because she was a valued employee.

In March 2014 the employer was changing some of the customer service work schedules due to seasonal changes in their work flow. The claimant was off on March 14, 15 and 17 which prompted her supervisor Wendy to request a medical note for the three shift absence under their policies. The claimant disputed the need for a medical note and would not grant the employer's request to obtain a note from her treating physician because she thought it violated her privacy. The claimant spoke with Debbie Nichols in Human Resources about the issue and Ms. Nichols mistakenly told the claimant she did not have to provide a note because she thought the claimant's absence was only two shifts and not three.

The claimant was informed about the change in her schedule when she returned on March 19, 2014 and she believed that Wendy was being vindictive because she was now scheduled to work on days when she attended school. The claimant tendered her resignation on that day without speaking with Mr. Schmider. She worked on March 21 but left at lunch and did not return so the employer considered it to be her last day.

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.

EVALUATION OF EVIDENCE

The credible evidence presented at the hearing shows that the claimant voluntarily quit this position. In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence, that the quit was for either good cause or valid circumstances, as those terms are defined above. Hargrove v. City of Baltimore, 2033-BH-83.

Mr. Schmider for the employer credibly testified that the claimant never came to him to ask about her new schedule: he would have offered her a continuing accommodation for her schooling if she had asked. Also, the claimant may have overreacted to the request for a medical note because the employer was simply enforcing their policies for absences of three shifts or more. Lastly, the claimant could have kept her job if she pursued other alternatives to abruptly resigning since the employer credibly testified that the claimant did not have to leave – she was a valued employee who they would have sought to retain in spite of this misunderstanding.

As the claimant has not presented evidence that there was good cause for the quit due to the conditions of employment or the actions of the employer, a finding of a voluntary quit for good cause or valid circumstances cannot be supported.

Therefore, I hold that the claimant voluntarily resigned without good cause or valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Employment Article, Section 8-1001 pursuant to this separation from employment.

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 March 16, 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 Examiner is affirmed.



P G Randazzo, 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 May 23, 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: May 02, 2014
BLP/ceh/Specialist ID: WCU3P
Seq No: 003
Copies mailed on May 09, 2014 to:

TEIANA BOYD
A P WOODSON COMPANY
LOCAL OFFICE #63
ANDREW M. DANSICKER ESQ.