

DLLR

STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

ERRIS N. GLENDENING, Governor
KATHLEEN KENNEDY TOWNSEND, Lt. Governor
JOHN P. O'CONNOR, Secretary

Board of Appeals
Hazel A. Warnick, Chairperson

DLLR Home Page • <http://www.dllr.state.md.us/dllr/>
DLLR E-mail • mddllr@mail.state.md.us

- DECISION -

Claimant:

KELLY D. PRAYLOW

Decision No.: 01712-BR-99

Date: July 6, 1999

Appeal No.: 9904971

Employer:

CHESAPEAKE APPRAISAL &
SETTLEMENT SVCS INC

S.S. No.:

L.O. No.: 02

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: August 5, 1999

REVIEW ON THE RECORD

The Board adopts the following findings of fact and reverses the decision of the hearing examiner.

The claimant worked full-time in appraisals from August 25, 1997 to January 14, 1999. She is unemployed as the result of a voluntary quit.

The claimant developed a panic disorder condition towards the middle of 1997 and was being treated by a physician for this disorder. This disorder caused the claimant to frequently report to work late and miss days from work. At first, the employer had no problem and accommodated the claimant's condition as long as she eventually got to work and completed her job. The claimant did adequately



perform her job. However, in January 1999, the claimant reported to a new supervisor who did not wish to accommodate the claimant's erratic work schedule. The claimant was offered another substantially similar service job in the appraisals department making the same salary. The Board finds that this was a reasonable alternative accommodation in light of the claimant's disability. There is insufficient evidence in the record that this alternative constituted a demotion or was punitive in nature. In fact, the decision was a reasonable balance between management's prerogative to make reasonable changes in the employer's working environment while at the same time accommodating the claimant's disability. The claimant immediately refused this change and gave two weeks notice of her resignation. The employer accepted the claimant's resignation effective January 14, 1999. The claimant presented no evidence that she would be medically unable to perform the new duties offered to her by the employer.

Section 8-1001 of the Labor and Employment Article provides that an individual 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 serious, valid circumstances.

Before a penalty can be imposed under Section 8-1001, it must be shown that the claimant voluntarily quit her job. The term "leaving work voluntarily" is not defined anywhere in Section 8-1001, and absent some imperative reason for enlarging its meaning, the term is construed as having its ordinary and commonly accepted meaning. Allen v. CORE Target City Youth Program, 275 Md. 69 (1975).

The phrase "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 her own choice, intentionally, or of her own free will, terminated the employment.

Once it has been established that the claimant voluntarily quit her job, the claimant has the burden of proving that good cause or valid circumstances exist. Hargrove v. City of Baltimore, 2033-BH-83. To show good cause, the claimant must prove that the cause for quitting was directly connected with the conditions of employment or actions of the employer. To show valid circumstances, the claimant must prove either that the cause for quitting was a substantial cause directly connected with the conditions of employment or actions of the employer, or, if the cause for quitting was personal, the claimant must show that the reason was necessitous or compelling and that the claimant had no reasonable alternative other than to quit the job.

If the personal reason for quitting was due to a health problem (either the claimant's health problem or that of another for whom the claimant must care), the claimant has the burden of producing documentary evidence of the health problem from a physician or hospital. Davis v. Maryland Homes for the Handicapped, 25-BR-84. Also See Staples v. Giant Food, Inc., 685-BR-91 (the claimant voluntarily quit due to a medical condition but failed to prove that the condition was sufficiently serious to leave him no other alternative but to leave his job. The Board found that the claimant

voluntarily quit without good cause or valid circumstances). But See Williams v. Prince George's County Board of Education, 461-BR-85 (the statute does not require evidence that a physician "directly advise" a claimant to quit employment. Therefore, where the claimant establishes that she is suffering from an ailment made worse by the work performed, valid circumstances may be supported).

Where a reasonable alternative to quitting exists, a finding of valid circumstances is not supported. Contra Pearson v. Annapolis Life Care, Inc., 1013-BR-92 (No reasonable alternative to quitting existed where the employer listed a number of alternatives at the unemployment hearing, but where none had been actually offered to the claimant when she brought up her problem in the course of employment).

In order to establish either good cause or valid circumstances, the claimant must meet her burden of proof by a preponderance of the evidence.

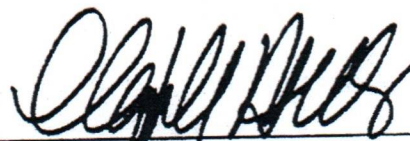
The Board finds in the case at bar, that the claimant has failed to meet her burden of showing that valid circumstances existed for her decision to voluntarily quit her job. Although she "felt" the alternative position was a demotion, insufficient evidence was presented to show that it actually was a substantial change in her working conditions. The evidence supports a finding that the alternative position offered to her prior to quitting had substantially the same tasks and duties as her previous work and was for equivalent pay. The Board finds that it is within management's prerogative to offer other similar and reasonable accommodations to employees who suffer from a documented disability.

The Board is persuaded that the employer in this case offered a reasonable accommodation to the claimant in light of her disability and the employers needs. The claimant has failed to show, by a preponderance of the evidence, that this reasonable alternative, offered to her in the course of employment, medically precluded her from performing the job, leaving her no other alternative but to quit. The Board, therefore finds that a finding of valid circumstances cannot be supported within the meaning of Section 8-1001 in this case.

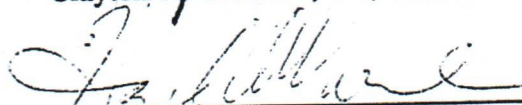
DECISION

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 Section 8-1001 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning February 21, 1999 and until the claimant becomes reemployed, earns at least fifteen times her weekly benefit amount and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Hazel A. Warnick, Chairperson

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 410-767-2424 or 1-800-827-4839. 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.

ce

Copies mailed to:
KELLY D. PRAYLOW
CHESAPEAKE APPRAISAL &
CHESAPEAKE APPRAISAL &
Local Office - #02

UNEMPLOYMENT INSURANCE APPEALS DECISION

KELLY' D. PRAYLOW

Before the:

SSN :

Claimant

vs.

CHESAPEAKE APPRAISAL &
SETTLEMENT SVCS INC

Employer/Agency

Maryland Department of Labor,
Licensing and Regulation
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9904971
Appellant: Claimant
Local Office: 02 / Glen Burnie

April 29, 1999

For the Claimant: PRESENT

For the Employer: BRUCE CHAILLOU

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 worked in Appraisals from August 25, 1997 to January 14, 1999, and was paid \$11 an hour.

The claimant developed a panic disorder condition towards the middle of 1997 and was being treated by a physician for this disorder. This disorder caused the claimant to report in late and miss days from work. The employer had no problem and worked around the claimant's condition as long as she got to work eventually and completed her job. The claimant did complete her job and did a good job and got performance appraisals that were above average.

In January 1999, the claimant had her supervisor changed to another person. This other person was not about to tolerate the claimant coming in to work late due to her medical condition. The supervisor indicated that she would have to accept the fact that she would have to be at work on time or leave the job.

However, the vice president, Bruce Chaillou offered the claimant another job also in Appraisals, but with a limited number of vendors, making the same salary. The claimant felt that this was a demotion due to her illness. The claimant thought about accepting the position but refused to accept it and handed in her two weeks notice instead. As a result, the claimant quit her job on January 14, 1999, for refusing to accept another position handling a limited number of vendors rather than the larger numbers that she had with her previous job.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1001 (Supp. 1996) 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

In the instant case, the claimant has the burden to prove good cause or valid circumstances for quitting her job. In this case she has proven valid circumstances. The totality of the evidence indicates that the claimant was having her job changed due to the fact that her new supervisor was not tolerant of her medical condition. However, she was being offered a job doing the same type of work with less vendors and making the same amount of money. Therefore, it is felt that the employer was making accommodations for the claimant, but since the claimant felt that this was a demotion, refused the job. This amounts to valid circumstances in the opinion of the Hearing Examiner and therefore a limited penalty is warranted in this case.

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 (Supp. 1996). The claimant is disqualified for the week beginning January 10, 1999, and for the four weeks immediately following.

The determination of the Claim Specialist is modified.

R A Breschi

R. A. Breschi, 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 410-767-2424 or 1-800-827-4839. 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.

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by May 14, 1999.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: April 21, 1999
RC/Specialist ID: ERGB2
Seq. No.: 001
Copies mailed on April 29, 1999 to:

KELLY' D. PRAYLOW
CHESAPEAKE APPRAISAL &
LOCAL OFFICE #02