

**- DECISION -**

Claimant:  
TINA L MURRAY

Decision No.: 1869-BR-14

Date: August 15, 2014

Appeal No.: 1327157

Employer:  
LORD & TAYLOR LLC

S.S. No.:

L.O. No.: 61

Appellant: CLAIMANT - REMAND FROM  
COURT

Issue: Whether the claimant left work voluntarily, without good cause within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1001.

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**- 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: September 14, 2014

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**PROCEDURAL HISTORY**

On January 3, 2014, the Board of Appeals ("Board") denied the appellant's request for a review of a decision concerning her claim for unemployment insurance benefits. The appellant appealed the decision of the Board of Appeals to the Circuit Court for Howard County.

On May 15, 2014, the Circuit Court for Howard County remanded the appellant's appeal to the Board to review the decision of the hearing examiner to determine whether the appellant is eligible for unemployment benefits.

### FINDINGS OF FACT

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 began working on August 18, 2012 as a full-time sales associate with the agreement that the employer would accommodate the claimant's religious schedule. On Wednesday nights the claimant would not work after 6:15 p.m. and on Sundays, the claimant would not come in before noon and beginning in 2013, the claimant would not work until after 3:00 p.m. on Sundays.

In October 2013, a new area sales manager was brought into the store and the claimant's department. The claimant informed the manager of the employer's agreement to accommodate her religious schedule. The manager informed the claimant that she could not have off the times for her religious observances unless she found someone to work for her.

The employer then began to mark the claimant as not coming in for those times that she was scheduled, even though she had found a replacement. The claimant complained to her supervisor that they were no longer accommodating her religious needs. The claimant had several meetings with her supervisors to work out her schedule and her religious accommodations. However, the employer continued to hold that they would not accommodate her religious schedule as agreed to when the claimant was hired. The claimant resigned on May 27, 2013.

"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 a similar case, the claimant's religious beliefs did not allow her to work between sundown Friday and sundown Saturday. This belief was in conflict with the shift schedules she would have to work from time to time. As a result, she voluntarily quit. The claimant's resignation was for religious reasons and constituted good cause. *Hickey v. Maryland State Police*. 223-BH-88.

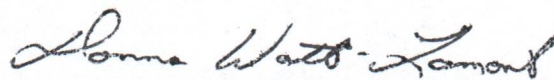
In the instant case, at the time of hire, the parties had agreed that the claimant's religious accommodation would be met. The claimant met several times with management to complain of the violation of her employment agreement with no results. The weight of the credible evidence established that the claimant quit her job due to the employer's failure to abide by the terms under which the claimant had been hired. The employer did not attend the appeal hearing to present any testimony or evidence in rebuttal.

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 shall be reversed for the reasons stated herein and in the hearing examiner's decision.

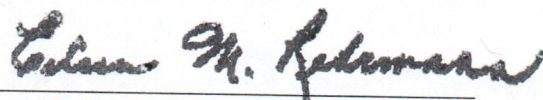
**DECISION**

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 LORD & TAYLOR LLC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

TINA L. MURRAY

LORD & TAYLOR LLC

JEAN JACOBS

LORD & TAYLOR

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

TINA L MURRAY

SSN #

**Claimant**

vs.

LORD & TAYLOR LLC

**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: 1327157  
Appellant: Claimant  
Local Office : 61 / COLLEGE PARK  
CLAIM CENTER

October 09, 2013

**For the Claimant:** PRESENT , JEAN JACOBS, WANDA MURRAY

**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).

**PREAMBLE**

This case was scheduled for hearing on October 1, 2013 at 10:30 a.m. At 11:30 a.m. , the Claimant had not completed direct testimony in the case. The Hearing Examiner offered the Claimant the opportunity to continue the case to take additional testimony on another date. The Claimant, through her representative, refused the offer.

## FINDINGS OF FACT

The Claimant, Tina Murray, began working for this Employer, Lord & Taylor LLC, on or about August 18, 2012. At the time of separation, the Claimant was working as a sales associate, earning wages in the amount of \$9.05 per hour. The Claimant last worked for the Employer on May 27, 2013 before voluntarily resigning her position.

At the time of hire, the Claimant spoke to the General Manager, Suzannah Zachos, and Human Resources Representatives, Kim Nugent and Beverly Green about her work hours. The parties agreed to accommodate her religious observances by not scheduling her to work after 6:15 p.m. on Wednesdays and after 12:00 noon on Sundays. The Claimant was not given a set work schedule; her hours would vary from week to week.

In October, 2012, the Employer scheduled the Claimant as needed. If the hours were during the agreed upon times, she was required to find a replacement. The Claimant was unhappy with this arrangement and she met with the Employer on several occasions in January and February to complain. The Employer indicated that they could not accommodate her hours any other way. When schedule changes were needed, the Claimant found a replacement. She was verbally counseled regarding attendance, but no further disciplinary action was taken.

When the Claimant received her schedule for the week ending 6/1/13, she felt her hours were unfairly reduced. She was scheduled to work 3 days, 5/27, 5/28 and 6/1/13. The Claimant did not work on 5/28/13 due to a doctor's appointment. She wasn't scheduled to work on Sunday or Wednesday. On June 1, 2013, she submitted her letter of resignation.

## 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.

## 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 not been met.

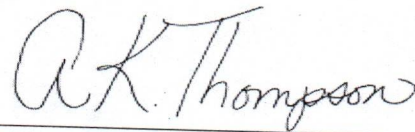
The credible evidence presented indicated that the Claimant quit his position for personal reasons. At the time she resigned, she objected to looking for a replacement when she needed to be off. The Claimant had accepted and complied with this requirement since October, 2012. There is no evidence to indicate that the Claimant's job was in jeopardy of termination. Accordingly, insufficient evidence was presented to show that her circumstances were of such a necessitous and compelling nature that she had no other choice than to quit.

It is thus determined that the Claimant has failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate 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 May 26, 2013 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.



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A K Thompson, 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 24, 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: October 01, 2013

CH/Specialist ID: RBA85

Seq No: 001

Copies mailed on October 09, 2013 to:

TINA L. MURRAY  
LORD & TAYLOR LLC  
LOCAL OFFICE #61