-DECISION-

Claimant:
AMANDA B YOWELL

Employer:
MARVIN LISS PC

Decision No.: 2292-BR-12

Date: May 07, 2012

Appeal No.: 1133815

S.S. No.:

L.O. No.: 61

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: June 06, 2012

REVIEW OF THE RECORD

After a review of the record, and after deleting "or about" from the first and third sentences of the first paragraph, the Board adopts the hearing examiner's modified findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

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 a memorandum in support of the claimant's appeal, her counsel contends the hearing examiner made errors in his application of the law to the facts, particularly in light of precedent cases previously issued by this Board. The Board agrees and, for that reason, reverses the hearing examiner's decision.

The claimant had an on-going dispute with the employer over the number of hours for which she was paid overtime and the amount of her overtime pay. The claimant did not fail to give the employer an opportunity to correct this situation. The claimant corresponded with the employer for several months, expressing her concerns and reiterating her position that she was not being properly compensated for her hours worked. The employer had an extended period of opportunity to correct this situation or to strictly limit the claimant to working no more than forty hours per week. The employer only questioned the claimants hours when she requested compensation for overtime at one and one-half times her regular hourly wage. The claimant's request appears to have been consistent with Federal law on the subject. The employer was obligated to either compensate the claimant under these terms or create a different working arrangement whereby the claimant would not be eligible for overtime.

The Board does not find the claimant had any further obligation to allow the employer additional time to correct this situation. The claimant exhibited sufficient patience and, as noted in her counsel's brief, the damage was done when the claimant was not properly and timely paid for hours worked. The Board finds these circumstances sufficient to support a finding of 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 this employment for good cause within the meaning of *§8-1001* for quitting this employment. The decision 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 MARVIN LISS PC.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr., Associate Member

RD
Copies mailed to:
AMANDA B. YOWELL
MARVIN LISS PC
JENNIFER S. SMITH ESQ.
DMITRY BALANNIK
Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

AMANDA B YOWELL

SSN #

Claimant

vs.

MARVIN LISS PC

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: 1133815
Appellant: Claimant
Local Office : 61 / COLLEGE PARK CLAIM CENTER

January 20, 2012

For the Claimant: PRESENT, JENNIFER SMITH, ESQ.

For the Employer: PRESENT, MARVIN LISS, ESQ., DMITRY BALANNIK, ESQ., ERIC WAXMAN

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, Amanda Yowell, began working for this employer on or about September 24, 2010. At the time of separation, the claimant was working full-time as a legal secretary, making $14.42 an hour. The claimant last worked for the employer on or about August 20, 2011, before resigning.

During the first four months of employment, the claimant and her supervisor (and owner) Marvin Liss, had differing opinions on the issue of whether or not the claimant was entitled to overtime pay. The claimant believed she was entitled to overtime and Mr. Liss felt he had reason to believe that the claimant, who worked off-site in Leonardtown, Maryland, was not working the hours she was reporting. Accordingly, the employer determined that effective February 2011, the claimant would be paid on a salaried basis, based on

80 hours of work, bi-weekly. In addition, the claimant would be entitled to overtime for hours she worked over the 80 hours, so long as she sought, and was granted, approved overtime. The employer started using Paychex Inc in February, as part of the new billing set-up.

The claimant was expected to keep track of her hours, so as to determine whether or not she was entitled to overtime during any two week cycle, commencing in February 2011. The claimant was directed that any overtime hours had to be pre-approved. This model worked initially, and the claimant was afforded occasional overtime during the initial period when both parties worked together and hours were tallied.

The claimant did not report her hours to the employer for the period between June 9, 2011 and August 3, 2011. During this period, the claimant was paid her standard, two week salary, as processed by Paychex Inc.

The claimant emailed Mr. Liss on August 21, 2011 (a Sunday) and sent him all the overtime hours she allegedly worked between June 9, 2011 and August 3, 2011. She asked Mr. Liss if they could "work out some way that we can resolve this and make arrangements to avoid a similar situation in the future." (Claimant's Exhibit No. 3) She went on to suggest that she could be afforded 4 days of paid vacation in September 2011 in order to make up for any identified unpaid overtime.

In his initial response, Mr. Liss invited the claimant to discuss the matter the following day, August 21, 2011. The claimant replied at 6:33 p.m. that she had been "religiously submitted her time sheets" to the employer and she asserted her legal right to the overtime. When, in a follow-up email the same day, Mr. Liss asked the claimant to take the following day off and reiterated his willingness to discuss the matter with her the next business day, the claimant resigned her position "effective immediately" as of 9:57 p.m. The parties never met face to face to discuss the overtime issue or any proposed resolution.

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 his 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 testimony and evidence established that the claimant did not afford the employer the opportunity to address or correct any outstanding and recent issues regarding overtime hours prior to resigning. While the claimant may have had legitimate concerns about the lack of overtime payments during the first four months of her employment, through February 2011, the issue here is whether or not the claimant had good cause or reasonable circumstances for resigning on August 21, 2011.

The claimant acknowledged in the hearing that, contrary to what she emailed the employer on August 21, 2011, in the two months prior to August 21, 2011, she had not been "religiously" submitting her time sheets. Instead, she had failed to submit any of the daily or weekly hours between June 9, 2011 and August 3, 2011. In addition, the claimant did not assert, or establish at the hearing, that she had ever asked the employer to authorize any overtime for the period between June 9, 2011 and August 3, 2011.

The employer had no other means to regulate or monitor the claimant's actual hours but for her self-reporting, as she worked in a satellite office. Accordingly, in keeping with the understanding reached in February 2011, the claimant was paid her regular salary, based on 80 hours bi-weekly, per Paychex Inc.

The claimant reported forth all the hours she allegedly worked between June 9, 2011 and August 3, 2011 in one email, on August 21, 2011. In that email, she accused the employer of not paying her overtime and suggested a resolution – that she be afforded four days of paid vacation in September 2011. The employer replied that he would "be happy to discuss" the matter the next day, on Monday, August 21, 2011. What followed was a brief email transaction that resulted in the claimant's abrupt, one sentence resignation. (Employer's Exhibit No. 2)

The claimant did not give the employer the reasonable opportunity to correct any alleged failure to pay overtime. She did not report her hours, as had been customary, for the entire two month period between June 9, 2011 and August 3, 2011 until the same day in which she resigned. The employer did not have the reasonable opportunity to resolve the matter on August 21, 2011, as he needed time to investigate and the day in question was a Sunday. The claimant did not accept the employer's invitation to come into work on August 22, 2011, to discuss her complaint. Instead, after a few more emails, the claimant abruptly resigned.

This matter is distinguishable from Bishop v. Ward Component Systems, Inc., 801-BR-87, in that the claimant failed to establish that she did, in fact, work authorized overtime between June 10, 2011 and August 3, 2011. The employer, here, did not "require" her to work overtime, either.

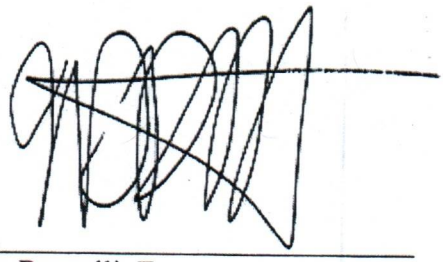
The employer did not believe the claimant was working overtime between June 10, 2011 and August 3, 2011, because she was not reporting any hours, as had been customary, and she did not request authorization to work overtime, which was a requirement. Instead, the claimant brought the entire matter to the employer's attention on August 21, 2011 and rebuffed his invitation to address the matter during the

work week. The claimant failed to establish that she quit for good cause or valid circumstances.

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 August 14, 2011 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.



W Rosselli, 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

Any party 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 February 06, 2012. 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: January 09, 2012
DW/Specialist ID: WCP3A
Seq No: 001
Copies mailed on January 20, 2012 to:
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