

**- DECISION -**

Claimant:  
GRETA M MOREHEAD

Decision No.: 4213-BR-13

Date: October 2, 2013

Appeal No.: 1318890

S.S. No.:

Employer:  
PAIGE, MARILYN L

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: November 1, 2013

---

**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 full time hair stylist from August 2011 until May 21, 2013, earning commissions only. The claimant's employer went on a vacation. When the claimant went to cash her paycheck, the bank refused to cash the check informing the claimant that there were insufficient funds in the account. The claimant tried to cash her paycheck a second time and was told the same thing. As a result, all the employees began requesting their customers to pay them directly in order to make up the missing payment.

The employees found out that the salon's license to operate had expired. Under Maryland law, a stylist cannot work in an unlicensed salon. The employer told the employees that she was working on the license with the Comptroller's office.

The claimant reported to work on the next pay day and the employer informed the claimant that she could not pay the claimant because she could not open a new bank account.

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.

The credible evidence established that the employer failed to pay the claimant the money that was due her. Additionally, the salon was operating without a license and under Maryland law (with a few exceptions that are not relevant to this case), cosmetologists are only allowed to work in a beauty salon that holds a beauty salon permit.

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 is a substantial breach of the employment obligation and constitutes good cause to quit. *Marlo Furniture Company, Inc.*, 1121-BR-92. In the instant case, the employer did not pay the claimant in a timely manner. The claimant, therefore, had good cause to quit. Additionally, the salon did not have license to operate which created legal issues for the operators.

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 PAIGE MARILYN L

The Hearing Examiner's decision is reversed.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

GRETA M. MOREHEAD

PAIGE MARILYN L

MY PLACE HAIR SALON

Susan Bass, Office of the Assistant Secretary



**UNEMPLOYMENT INSURANCE APPEALS DECISION**

GRETA M MOREHEAD

SSN #

**Claimant**

vs.

PAIGE, MARILYN L

**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: 1318890

Appellant: Employer

Local Office : 63 / CUMBERLAND

CLAIM CENTER

July 25, 2013

**For the Claimant:** PRESENT, LINDA ALEXANDER, KARENA SOWERS

**For the Employer:** PRESENT, MARILYN PAIGE, MARGO HULL

**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, Greta Morehead, worked for Marilyn L. Paige, from August of 2011, through May 21, 2013. The claimant worked on a commission only basis while working full time as a hair stylist.

The employer, Marilyn Paige, went on vacation on May 13, 2013. Before leaving she left instructions for her manager, Linda Alexander, to dispense paychecks while she was gone. Prior to leaving, the paycheck for a part time employee, Karena Sowers, bounced. Ms. Alexander gave the claimant and other employees their paychecks on May 14, 2013. The employees attempted to cash them and learned that there was not sufficient funds to cover the checks. The bank refused the claimant's check twice that week. The claimant, the manager, and all employees began requesting that customers that week pay with cash or checks payable



to the employees directly instead of the salon, in order to cover their payroll.

On May 18<sup>th</sup>, the employees discovered that the employer's State of Maryland license to operate indicated that it had expired on May 5, 2013. Unknown to the employees, Ms. Paige had resolved the issue and was working with the State Comptroller's office to correct the problem.

On May 19<sup>th</sup>, Ms. Paige returned and discovered that there was no cash in the salon and that all the stylists' personal belongings had been removed. She filed a police report regarding theft of cash. On May 20<sup>th</sup> the employees met with Ms. Paige and Ms. Paige explained the situation with the license and the employees admitted to taking the money to cover payroll. The claimant worked the next day. After work the claimant and the manager had to go to the police station to be questioned concerning the theft. The claimant quit the following 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

In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence presented at the hearing 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.

The claimant testified that she quit because the employer's license had expired and because her paycheck bounced. Either would be a valid reason for quitting, assuming the claimant performed some due diligence to allow the employer to correct what may have been a one-time problem. The claimant did not perform said due diligence. The employer had resolved the license issue and there was no cause for alarm on that front. Further, while it is true that Ms. Sowers had a prior check bounce, the evidence does not show that the employer had a chronic payroll problem. Rather, with the employer out of town, it would have been more prudent for the claimant to wait for her return and allow her to make good on the check. Instead, the claimant and the manager removed all of the cash flow from the employer while she was away, exacerbating the situation. The claimant even agreed to work after meeting with Ms. Paige on May 21, 2013. While the claimant did not detail what occurred at the police station, it seems more likely from the evidence presented, that this was a factor in her decision to quit. For all of these reasons, it is found that the claimant failed to show either good cause or valid circumstances for quitting.

### 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 19, 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 Examiner is reversed.



M. Franceschini, 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 of Further Appeal**

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a further appeal 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 August 09, 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: July 18, 2013

DW/Specialist ID: WCU6H

Seq No: 002

Copies mailed on July 25, 2013 to:

GRETA M. MOREHEAD

PAIGE MARILYN L

LOCAL OFFICE #63

MY PLACE HAIR SALON