

**- DECISION -**

Claimant:	Decision No.:	443-BR-13
KENNETH M SWARTZ	Date:	January 31, 2013
	Appeal No.:	1235433
	S.S. No.:	
Employer:	L.O. No.:	65
OSTERMAN VENTURES INC	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.

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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: March 04, 2013

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the hearing examiner's 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 his appeal, the claimant makes several specific contentions of error as to the findings of fact and the conclusions of law in the hearing examiner's decision. Because the Board agrees that the decision was in error, the Board will not specifically address the claimant's contentions.

On appeal, the Board reviews the evidence of record from the Lower Appeals Division hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter.

The Board has thoroughly reviewed the record from the hearing. That evidence does not support the hearing examiner's decision. The evidence demonstrates that the claimant returned to the position believing certain terms and conditions would be met. The claimant worked for three months, anticipating the employer would increase his hours to full-time, increase his percentage on completed jobs, and provide benefits. The claimant's hours did not appreciably increase, nor did his percentage. Because he was expected to be on call every day, he was precluded from effectively seeking other employment. Additionally, the claimant was incurring expenses, for which he was not reimbursed, and he was not earning sufficient income to warrant the continued costs. The claimant attempted to resolve this with the employer, but was only told that he would get more hours and business increased.

When, on June 10, 2012, the claimant could not get the supplies he needed from a supplier because of some problem with the employer's account, the claimant became frustrated. He left the job after waiting for about two hours. Later that day he contacted the employer and stated that he was no longer going to continue working.

The Board concludes that the claimant gave the employer a reasonable amount of time within which to provide the things that were promised to him. The claimant continued to work but, because of the limited hours for which he had work, he was unable to earn enough to offset the unreimbursed costs he was incurring. And, the claimant was not able to seek other employment because of the employer's requirement that the claimant be available during the regular work week. The Board is of the opinion that the claimant demonstrated he had good cause for his decision to leave this employment.

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 his burden of demonstrating that he 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 OSTERMAN VENTURES INC.

The Hearing Examiner's decision is reversed.



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Donna Watts-Lamont, Chairperson



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Clayton A. Mitchell, Sr., Associate Member

KJK

Copies mailed to:

KENNETH M. SWARTZ

OSTERMAN VENTURES INC

Susan Bass, Office of the Assistant Secretary



**UNEMPLOYMENT INSURANCE APPEALS DECISION**

KENNETH M SWARTZ

SSN #

**Claimant**

vs.

OSTERMAN VENTURES INC

**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: 1235433

Appellant: Claimant

Local Office : 65 / SALISBURY  
CLAIM CENTER

November 14, 2012

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , KEITH OSTERMAN

**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, Kenneth M. Swartz, was laid off and began working again for this employer, Osterman Ventures Inc., in March 2011. At the time of separation, the claimant was working part-time (approximately 24 hours per week) as a handyman-technician. The claimant last worked for the employer on June 10, 2012, before voluntarily quitting due to job dissatisfaction.

The claimant had initially begun working for this employer in October 2011. At the time of hire, the claimant was told he would be hired full-time, provided health care coverage, and would be paid based upon a percentage of each job assigned. From the beginning, the claimant was receiving about 2-3 days of work per week on average. The claimant was required to be on-call for the other days during the week



(Monday through Friday) in case other work came in. The claimant complained about his hours. He was informed that he would be provided more work as it became available. The claimant was paid based upon a percentage of the job. Since the price of the job was fixed, the claimant had some incentive to finish jobs as quickly as possible. Some jobs the claimant was required to return to due to deficiencies on those jobs. That would cut into the claimant's pay for those jobs as his hours on the job would be extended. Regarding his percentage of pay on the jobs, that did not increase prior to his separation in June 2012. No promise was given when such a percentage increase would take place. When hired initially in October 2011, the claimant was informed he would be provided health coverage after 90 days if he wished. The employer paid half of your personal health coverage if you brought your own health coverage or could provide health coverage and would cover half of that policy. The employer got the paperwork together for health coverage for the claimant. Through some miscommunication, the claimant did not receive the paperwork, and the health coverage issue was never raised subsequently.

The claimant accepted a voluntary lay off over the months of January and February 2012 and received Unemployment benefits for those months. The claimant was brought back to work some time in March 2012. At the time of hire, the same conditions existed when the claimant left work some time in December 2011 or early January 2012. Despite those conditions, the claimant returned to work for the employer. The claimant continued working for the employer until June 10, 2012, when he no longer wished to continue working under those working conditions. On June 10, 2012, the claimant was sent to work on a job. He went to the Lowes store in the area to get supplies and was informed the request to pay on the employer's commercial account had been denied. The claimant contacted the employer about the matter. Keith Osterman, Owner, informed the claimant he would fix the matter and to return to the job. The claimant, who was already on his way home, declined to return to the job. The claimant decided he could no longer afford to continue working for the employer under the-then present conditions. Based upon the work assigned and the money he was making, the claimant was not making sufficient money. The claimant informed the employer he was voluntarily quitting.

### 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.

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.

The claimant property manager resigned his employment after two years to seek employment in another field because he was no longer willing to cope with the hectic and demanding nature of his job. The



claimant was well aware of these job conditions at the time of hire. The claimant has neither good cause nor valid circumstances for resigning. Gisriel v. Charles H. Steffey, Inc., 1085-BH-83.

### 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 he 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.

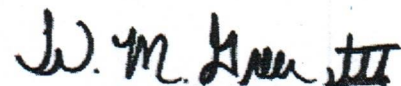
The facts show the claimant voluntarily quit due to job dissatisfaction. After the claimant was laid off, the claimant chose to return back to work for this employer with full knowledge of the conditions for which he faced. Those conditions did not change from when he was laid off some time in December 2011 or early January 2012. A voluntary quit due to job dissatisfaction is one that is without good cause or valid circumstances.

I hold the claimant's voluntary quit was without good cause or valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Emp. Article, Section 8-1001 pursuant to this separation from this 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 June 10, 2012, 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 Claim Specialist is affirmed.



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W E Greer, 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 November 29, 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 : November 05,2012

TH/Specialist ID: WCP27

Seq No: 003

Copies mailed on November 14, 2012 to:

KENNETH M. SWARTZ  
OSTERMAN VENTURES INC  
LOCAL OFFICE #65