

- DECISION -

Claimant:
CHRISTOPHER F CYRAN

Decision No.: 1627-BR-14

Date: June 04, 2014

Appeal No.: 1336293

S.S. No.:

Employer:
CITY OF GAITHERSBURG

L.O. No.: 65

Appellant: Employer

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: July 04, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact but finds that they warrant a different conclusion 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)*.

In the appeal to the Board, the employer did not contest that the claimant's separation was a voluntary quit. Therefore, the Board shall not address the nature of the claimant's separation from employment and finds the preponderance of the evidence supports a finding that the claimant manifested the requisite intent to voluntarily quit.

"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 the appeal to the Board, the employer's representative argues, in pertinent part,

The trial board would have determined if the charges brought against him were proper and what disciplinary action was warranted. To resign in lieu of facing this process is neither good cause nor valid circumstances....

To believe he would not get a fair hearing before the trial board or his self-serving unsubstantiated contention that the Chief of Police was out to get him does not constitute good cause or valid circumstances.

The Board agrees with the employer's representative's argument. The Board finds the claimant's contention that he would not receive a fair hearing before the trial board was speculation. The Board does not find the weight of the evidence supports the hearing examiner's *Evaluation of Evidence* in this regard. The Board is persuaded that the weight of the credible evidence supports a finding that the claimant voluntarily resigned in order to preserve his future employment prospects *in case* he did not prevail before the trial board. A resignation in order to avoid facing charges which may lead to discharge is a voluntary quit without good cause or valid circumstances. *Brewington v. Dept. of Social Services, 1500-BH-82; Roffe v. South Carolina Wateroe River Correction Institute, 576-BR-88* (where a claimant quit because he feared a discharge was imminent, but he had not been informed that he was discharged is without good cause or valid circumstances); *also see Cofield v. Apex Grounds Management, Inc., 309-BR-91*.

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 did not meet his burden of demonstrating that he quit for good cause or valid circumstances within the meaning of § 8-1001. The hearing examiner's decision shall be reversed for the reasons stated herein.

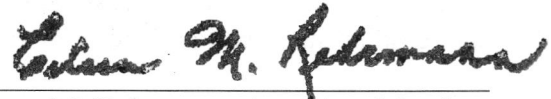
DECISION

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 Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1001. The claimant is disqualified from receiving benefits from the week beginning August 25, 2013 and until the claimant becomes re-employed, earns at least fifteen times their weekly benefit amount and thereafter becomes unemployed through no fault of their own.

The Hearing Examiner's decision is reversed



Clayton A. Mitchell, Sr., Associate Member



Eileen M. Rehrmann, Associate Member

VD

Copies mailed to:

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JEFFREY S. WEINTRAUB ESQ.
JAMES A. STULLER
CITY OF GAITHERSBURG
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UNEMPLOYMENT INSURANCE APPEALS DECISION

CHRISTOPHER F CYRAN

SSN #

Claimant

vs.

CITY OF GAITHERSBURG

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: 1336293

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

February 20, 2014

For the Claimant: PRESENT , JEFFREY S. WEINTRAUB, ESQ.

For the Employer: PRESENT , JAMES A. STULLER, DET. BRIAN HURTT

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, Christopher Cyran, worked for the above captioned employer, City of Gaithersburg, from January 2, 2006 until August 30, 2013 as a police officer earning \$54,000.00 per year in a full time capacity. The claimant resigned his position prior to a trial board hearing for alleged conduct unbecoming a police officer.

The claimant was investigated for an incident that took place at his residence on December 31, 2012 involving a woman he knew personally. The woman involved, Ms. Jones, had been aggressively pursuing the claimant and he repeatedly asked her to stop via text messages, emails and in-person contact. On December 31 Ms. Jones appeared at the claimant's residence unannounced and entered the dwelling without

permission. Despite his request for her to leave Ms. Jones continued to persist in her attempt to talk to the claimant. The claimant did not call for the police until after he made an attempt to subdue and arrest Ms. Jones by placing her in handcuffs. (See Cl. Ex. #1, Emp. Ex. #2)

Several law enforcement officers from various jurisdictions live in the claimant's neighborhood and he called for one or more of them. Prince George's county police were also contacted and they arrived on the scene as well. The claimant's residence is in Germantown which places him outside of his jurisdiction as a police officer at the time of the incident. (See Emp. Ex. #2)

Eventually Ms. Jones was released from custody and both parties were advised of their rights to pursue peace orders against the other. The claimant notified his superiors about this incident and Detective Brian Hurtt was assigned to investigate the incident for the City of Gaithersburg by Chief Mark Sroka. An issue was raised later when the claimant accessed a police database (LinX) to obtain personal information on Ms. Jones to file his peace order which was not an approved action since he was obtaining the information for his personal use. (See Emp. Ex. #2)

The claimant did not have a positive working relationship with Chief Sroka because the claimant raised issues and objections to some of the department policies (e.g.: uniforms, traffic court, etc.). In one conversation Chief Sroka told the claimant that he "was lucky" when he was hired by Chief Viverette (the prior Chief) because Chief Sroka did not consider the claimant to be "police material". (See Cl. Ex. #1) Despite this assessment, the claimant had positive annual evaluations and received accommodations' from the City over the course of his employment. (See Cl. Ex. #2-3)

The claimant was suspended on June 4, 2013 and his powers as a police officer were likewise suspended. A trial board was set for August 26, 2013 made up of three officers selected by Chief Sroka but in accordance with department policy. The claimant and his attorney negotiated a settlement with the City and he resigned effective August 30 with a reduction in the charges pending. (See Emp. Ex. #1-2) The claimant was advised to resign by his attorney, who was appointed by the Fraternal Order of Police (FOP) because if he lost at the trial board he would be terminated and a termination on his employment record would make future application in law enforcement difficult.

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.

A claimant who resigns in lieu of discharge does not show the requisite intent to quit under Allen v. CORE Target City Youth Program, 275 Md. 69 (1975). Therefore, a resignation in lieu of discharge shall be treated as a termination under Sections 8-1002 or 8-1003 of the law. Miller v. William T. Burnette & Company, Inc., 442-BR-82.

EVALUATION OF EVIDENCE

The credible evidence presented at the hearing shows that the claimant voluntarily quit this position. In a voluntary quit case, the claimant has the burden of proving, by a preponderance of the credible evidence, 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 credibly testified that Chief Sroka did not value him as an officer. He presented evidence to show that he was a capable police officer during his tenure with accommodation and no prior negative evaluations. He admitted that he should not have accessed the LinX database for his peace order but the employer did not demonstrate what harm this caused any party involved (the City or Ms. Jones in particular).

The claimant credibly testified that he thought he acted properly on December 31, 2012 when Ms. Jones entered his residence without his permission. It was later determined that he acted improperly outside of his jurisdiction through the investigation. However, the claimant was the only witness to the event present in this hearing and he credibly testified that he did not immediately call for County police because he thought he could handle the issue, which he clearly could not. It is apparent that he should have immediately contacted the appropriate police department and I believe the claimant would admit to as much in hindsight.

Lastly, the claimant credibly testified that he was advised to resign by his FOP attorney because a discharge on his record would likely preclude his future employment in law enforcement. He could reasonably see what he was up against and he had legitimate concerns that the three officers on the trial board, having been appointed by Chief Sroka, someone who did not find him to be "police material", would not be impartial. Rather than take the chance of never working in law enforcement he accepted a deal to resign rather than be terminated. This action was forced by the circumstances which I find to be valid in connection with his employment.

Therefore, I hold that the claimant voluntarily resigned without good cause but with valid circumstances. An unemployment disqualification shall be imposed based on Md. Code, Ann., Labor & Employment Article, Section 8-1001 pursuant to this separation from employment.

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. The claimant is disqualified for the week beginning August 25, 2013 and for the 9 weeks immediately following. The claimant will then be eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Examiner is reversed.



P G Randazzo, 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 March 07, 2014. 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 : February 07,2014
DAH/Specialist ID: USB7A
Seq No: 001
Copies mailed on February 20, 2014 to:

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