# -DECISION-

Claimant:
KYLELINE D HURLOCK

Employer:
BULL FROG INC

Decision No.: 2258-BR-11

Date: April 20, 2011

Appeal No.: 1045050

S.S. No.:

L.O. No.: 61

Appellant: Employer

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

---

## - 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: May 20, 2011

---

## REVIEW ON THE RECORD

After a review on the record, the Board adopts the following findings of fact and conclusions of law.

The claimant was employed as a part-time deli worker from September 15, 2008 through October 13, 2010. The claimant is unemployed as the result of a voluntary quit.

On October 13, 2010, the claimant became disoriented near the beginning of her shift. The employer directed the claimant to go home and contact the employer when she felt better. The claimant did not further contact the employer. The claimant abandoned her job.

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(H)(1).* The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E).*

A threshold issue in this case is whether the claimant voluntarily quit or whether the claimant was discharged. For the following reasons, the Board affirms the hearing examiner's decision on this issue.

The burden of proof in this case is allocated according to whether the claimant voluntarily quit or whether the employer discharged the claimant. In a discharge case, the employer has the burden of demonstrating that the claimant's actions rise to the level of misconduct, gross misconduct or aggravated misconduct based upon a preponderance of the credible evidence in the record. *Hartman v. Polystyrene Products Co., Inc., 164-BH-83; Ward v. Maryland Permalite, Inc., 30-BR-85; Weimer v. Dept. of Transportation, 869-BH-87; Scruggs v. Division of Correction, 347-BH-89; Ivey v. Catterton Printing Co., 441-BH-89.*

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.* 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 (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 (1985); also see Bohrer v. Sheetz, Inc., Law No. 13361, (Cir. Ct. for Washington Co., Apr. 24, 1984).* 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 (1985).* A resignation in lieu of discharge is a discharge under *§§ 8-1002, 8-1002.1,* and *8-1003. Miller v. William T. Burnette and Company, Inc., 442-BR-82.*

The intent to discharge or the intent to voluntarily quit can be manifested by words or actions. "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. 250(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.* A resignation submitted in response to charges which *might* lead to discharge is a voluntary quit. *Hickman v. Crown Central Petroleum Corp., 973-BR-88*; *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.* When a claimant receives a medical leave of absence but is still believes she is unable to return upon the expiration of that leave and expresses that she will not return to work for an undefinable period, the claimant is held to have voluntarily quit. *See Sortino v. Western Auto Supply, 896-BR-83.*

The intent to discharge can be manifested by actions as well as words. The issue is whether the reasonable person in the position of the claimant believed in good faith that he was discharged. *See Dei Svaldi v. Martin Taubenfeld, D.D.S., P.A., 1074-BR-88* (the claimant was discharged after a telephone conversation during which she stated her anger at the employer and the employer stated to her, "If that's the way you feel, then you might as well not come in anymore." The claimant's reply of "Fine" does not make it a quit). *Compare, Lawson v. Security Fence Supply Company, 1101-BH-82.* A quit in lieu of discharge is a discharge for unemployment insurance purposes. *Tressler v. Anchor Motor Freight, 105-BR-83.*

The Board finds based on a preponderance of the credible evidence that the claimant manifested the requisite intent to quit her job by abandonment. There is insufficient evidence that the employer discharged the claimant. The employer sent the claimant home when she was in medical distress but expected her to return to work. The employer contacted the employee the evening prior to her October 14, 2010 shift to ascertain her ability to return. The employer did not receive a return phone call. On October 14, 2010 the claimant asked the employer to borrow money. The claimant did not report to work or call out for medical reasons that day. The claimant did not call or report to work on October 15, 2010. The claimant's father picked up the claimant's paycheck on the evening of October 15, 2010. The employer has had no contact from the claimant since.

Finding that the claimant voluntarily quit her job, the Board shall now examine whether it was for a disqualifying reason.

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 three 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*; (3) when the claimant's quit is caused by the individual leaving employment (i) to follow a spouse serving in the United States military or (ii) because the claimant's spouse is a civilian employee of the military or of a federal agency involved with military operations and the spouse's employer requires a mandatory transfer to a new location. *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(1)(iii).* 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 claimant, duly notified of the date, time and place of the hearing, failed to appear. The Board finds the employer credible. The claimant did not present sufficient evidence that she quit due to medical[1] or for any other reason. The claimant failed to meet her burden.

---

[1] *Md. Code Ann., Lab. & Empl. Art., § 8-1001(c)(2)* specifically provides, "an individual who leaves employment because of the health of the individual or another for whom the individual must care…shall submit a written statement or other documentary evidence of that health problem from a hospital or physician." If a claimant fails to provide medical evidence of alleged medical problems, neither good cause nor valid circumstances are supported. *See Davis v. Maryland Homes for the Handicapped, 25-BR-84.* Where a claimant has a chronic ailment, and where conditions in the workplace are such that healthy persons are usually not affected, the claimant's medical problem is not considered connected with the work. *Ortiz v. Trappe Packing Corporation, 924-BR-92.*

In its appeal to the Board, the employer submitted documents for the Board's consideration. The Board, however, only considered the evidence submitted to the hearing examiner when rendering its decision. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)(1).* The parties, duly noticed of the date, time and place of the hearing, were afforded a full and fair opportunity to present their case before the hearing examiner. Notwithstanding the Board's discretion to take new evidence, *Md. Code Ann., Lab. & Empl. Art., § 8-510(d)(2),* "the presentation of evidence must come to an end at some point". *Maryland State Police v. Zeigler, 330 Md. 540, 556 (1993).*

The appellant in the instant case had clear notice of the obligation to present a case before the DLLR Hearing Examiner. *DLLR v. Woodie, 128 Md. App. 398, 411 (1999).* The hearing notice provided,

> This hearing is the last step at which either the claimant or the employer has an absolute right to present evidence. The decision will be made on the evidence presented. The decision will affect the claimant's claim for benefits, and it may affect the employer's contribution tax rate or reimbursement account.

In addition, the notice stated, in bold print, that additional "important information" could be found on the reverse side of the notice. Because the appellant was on notice that the only absolute opportunity to present evidence was before the DLLR Hearing Examiner, the appellant had no legitimate justification for the failure to present the evidence in the first hearing. *See DLLR v. Woodie, 128 Md. App. 398, 401 (1999).*

If an appealing party fails to appear at a hearing having been given the required notice of the hearing, the hearing examiner or the Board of Appeals may issue a decision on the facts available or may dismiss the appeal. *COMAR 09.32.06.02(M).* There are no cognizable defects in the record. Instead, the only end served by the Board remanding this case or having an additional hearing before the Board would be to allow the appellant a second opportunity to present evidence: evidence it was free to present at the first hearing. *See DLLR v. Woodie, 128 Md. App. 398, 408 (1999).* In the instant case, the Board finds that the parties were afforded their due process rights of notice and an opportunity to be heard. The Board, therefore, has not entered into evidence or given consideration to the documents submitted with the appellant's appeal.

The Board finds based on a preponderance of the credible evidence that the claimant did not meet her burden of demonstrating that she quit for good cause or valid circumstances within the meaning of *§ 8-1001.* The decision shall be affirmed for the reasons stated herein and in the hearing examiner's decision.

## 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 October 10, 2010 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

RD
Copies mailed to:
KYLELINE D. HURLOCK
BULL FROG INC
BULL FROG INC
Susan Bass, Office of the Assistant Secretary

# *UNEMPLOYMENT INSURANCE APPEALS DECISION*

KYLELINE D HURLOCK

**SSN**

**Claimant**

vs.

BULL FROG 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: 1045050
Appellant: Employer
Local Office : 61 / COLLEGE PARK CLAIM CENTER

January 11, 2011

**For the Claimant:**

**For the Employer:** PRESENT, JEREMY YVES CAPON

**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 8-1001 (voluntary quit for good cause), 8-1002 - 1002.1 (gross/aggravated misconduct connected with the work) or 8-1003 (misconduct connected with the work).

## FINDINGS OF FACT

The claimant began working for this employer on September 15, 2008, and her last day worked was October 13, 2010. At the time of her discharge, the claimant worked part-time as a Deli Worker, earning an hourly salary of $9.00.

On October 13, 2010, while at work, claimant became disoriented and was unable to fulfill her work duties. Employer directed claimant to go home and contact employer when claimant was "feeling better". Claimant did not contact employer on or before October 15, 2010.

The claimant's absence from work negatively impacted the employer's business and employer made a business decision to obtain other staff to fulfill claimant's job duties effective October 15, 2010.

## CONCLUSIONS OF LAW

Maryland Code Annotated, Labor and Employment Article, § 8-1003 provides for a disqualification from benefits where the claimant is discharged or suspended as a disciplinary measure for misconduct connected with the work. The term "misconduct" is undefined in the statute but has been defined as "...a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises." Rogers v. Radio Shack, 271 Md. 126, 132 (1974).

Maryland Code Annotated, Labor and Employment Article, § 8-1002 provides that an individual shall be disqualified from receiving benefits where he or she is discharged or suspended from employment because of behavior which demonstrates gross misconduct. The statute defines gross misconduct as conduct that is a deliberate and willful disregard of standards that an employer has a right to expect and that shows a gross indifference to the employer's interests. Employment Sec. Bd. v. LeCates, 218 Md. 202, 145 A.2d 840 (1958); Painter v. Department of Emp. & Training, et al. 68 Md. App. 356, 511 A.2d 585 (1986); Department of Economic and Employment Dev. v. Hager, 96 Md. App. 362, 625 A.2d 342 (1993).

An employer has a right to insist that its employees will report to work on time and adhere to a specified schedule and leave only when that schedule has been completed and that the failure of an employee to do so can be evidence of gross misconduct. Department of Economic and Employment Development v. Propper, 108 Md. App.595, 673 A.2d 713 (1996).

Absenteeism due to illness is not misconduct. DuBois v. Redden and Rizk, P.A., 71-BH-90.

Being placed on an involuntary, unpaid leave of absence due to a medical disability is the full equivalent of a discharge, for unemployment insurance purposes. Tillery v. Maryland News Distribution Company, 812-BR-92.

A claimant who is replaced while out on a medical leave…is discharged, but not for misconduct or gross misconduct. Vathes v. Wareheim Air Brakes, Inc., 366-SE-87.

## EVALUATION OF EVIDENCE

The employer had the burden to show, by a preponderance of the credible evidence, the claimant's discharge was for conduct which rose to the level of misconduct or gross misconduct, pursuant to the Maryland Unemployment Insurance Law. Hartman v. Polystyrene Products Company, Inc., 164-BH-83. In this case, the employer failed to meet this burden.

An employee's violation of the employer's attendance policy does not automatically result in a finding of misconduct even if it is counted as unexcused according to the employer's policy. In this case, the claimant was absent from work due to her illness. Absenteeism due to illness is not misconduct. DuBois, *supra*.

Although the employer's business may have been negatively impacted by claimant's absence from work, this does not mean the nature of the claimant's discharge is a disqualifier for the receipt of unemployment insurance benefits. The reason for the absence supports a finding of no misconduct. Accordingly, I hold the employer has failed to meet its burden in this case to prove that the claimant was discharged for any degree of misconduct connected with the work and benefits are, therefore, granted.

## DECISION

IT IS HELD THAT the claimant was discharged, but not for misconduct connected with the work within the meaning of Maryland Code Annotated, Labor and Employment Article, § 8-1003. No disqualification is imposed based upon this separation from employment with Bull Frog, Inc. The claimant is eligible to receive benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning other eligibility requirements at ui@dllr.state.md.us or telephone (410) 949-0022 from the Baltimore region, or (800) 827-4839 from outside the Baltimore region. Deaf claimants with TTY may contact Client Information Service at (410) 767-2727, or outside the Baltimore region at (800) 827-4400.

The determination of the Claims Specialist is affirmed.

Deborah Camper

D F Camper, 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 January 26, 2011. 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 04, 2011
DW/Specialist ID: WCP8A
Seq No: 001
Copies mailed on January 11, 2011 to:
KYLELINE D. HURLOCK
BULL FROG INC
LOCAL OFFICE #61
BULL FROG INC