

**- DECISION -**

Claimant:  
TYRONE E SMITH

Decision No.: 2275-BR-12

Date: May 09, 2012

Appeal No.: 1143749

S.S. No.:

Employer:  
FEDERAL EXPRESS CORP  
ATTN PAYROLL

L.O. No.: 65

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: June 08, 2012

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**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. The Board makes the following additional findings of fact:

The claimant continually apprised the employer of his medical condition. The claimant provided all required and requested information to the employer throughout this period.

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)*.

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)*.

“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*. 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 requests “...another hearing to discuss my case again.” He also expresses his confusion relative to the hearing examiner’s decision. On appeal, the Board reviews the evidence of record from the Lower Appeals Division hearing. The Board will not order a new hearing, or the taking of additional evidence, unless there has been clear error, a defect in the record, or a failure of due process. In this case, the record is complete and both parties were afforded a full and fair opportunity to present their evidence. However, the Board is of the opinion that the evidence supports a different conclusion.

The hearing examiner found the claimant had not established valid circumstances because he had not submitted written documentation of his medical condition and his inability to work at this employment. While the Board agrees that the statute requires this, the Board finds that this documentation is necessary only where there is some dispute or disagreement as to the claimant’s medical condition or ability to perform his duties. In this case, the claimant had submitted documentation to the employer. The employer did not dispute or disagree with the claimant’s assertions concerning his medical condition. The

parties agreed that the claimant could not, for health reasons, continue to work at the jobs available with this employer. And, because the claimant did not have any leave remaining available to him, he voluntarily quit in the hopes that he could return at some point.

The Board notes that, if the claimant had not quit, the likely result of this would have been that the claimant was discharged because he was unable to perform the required duties of his position for reasons which were beyond his reasonable control. Such a separation would not have been disqualifying. The mere fact that the claimant quit so that he could remain eligible to be rehired should not change his separation into one which is disqualifying. The Board finds that the greater weight of the evidence of record supports a finding that the claimant had valid circumstances for leaving 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 did not meet his burden of demonstrating that he quit this employment for good cause. However the claimant has met his burden and established that he had valid circumstances within the meaning of § 8-1001 for quitting this employment. The decision shall be reversed for the reasons stated herein.


**The employer, provided that the employer has not elected to be a reimbursing employer pursuant to Md. Code Ann., Lab. & Empl. Art., §8-616, et seq., should note that any benefits paid to the claimant as a result of this decision shall not affect its earned (tax) rating record. See Md. Code Ann., Lab. & Empl. Art., §8-611(e)(1).**

The claimant is disqualified from the receipt of benefits for the week beginning October 9, 2011, and for the next four weeks thereafter.

### DECISION

It is held that the claimant left work voluntarily, without good cause but for 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 9, 2011 and the four weeks immediately following.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

TYRONE E. SMITH

FEDERAL EXPRESS CORP

ROBERT SAUER

FEDERAL EXPRESS CORP

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

TYRONE E SMITH

SSN #

**Claimant**

vs.

FEDERAL EXPRESS CORP  
ATTN PAYROLL

**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: 1143749

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

January 20, 2012

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, ROBERT SAUER, WILLIAM BUSH

**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, Tyrone Smith, began working for this employer, Federal Express Corporation, on or about May 2, 2006. At the time of separation, the claimant was working as a material handler, earning \$13.70 per hour. The claimant last worked for the employer on or about October 13, 2011, before voluntarily resigning his position.

The claimant had significant medical issues. He had metal rods, screws, and bolts in his back that did not allow him to work in his capacity at Federal Express. The claimant took a medical leave of absence from the employer from October 2010 to May 2011. Upon his return, the claimant performed light duty for the employer. Beginning in September 2011, he could no longer perform the light duty. The claimant was not

able to provide the employer with a definable date when he would be able to get off light duty or return to work. The claimant asked the employer to extend his leave until November 6, 2011 but the employer was unable to do so. As a result, the claimant quit his employment.

### 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.

The claimant received a leave of absence to care for her seriously ill father, but was still unable to return upon the expiration of the leave and could not give the employer a date for her expected return. The employer replaced the claimant. Although the claimant did not want to quit, she intended not to return to work for an undefinable period and this constitutes a voluntary quit for valid circumstances. Sortino v. Western Auto Supply Company, 896-BH-83.

Md. Code Ann., Labor & Emp. Article, Section 8-1001(c)(2) provides that 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 the health problem from a hospital or physician."

### 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 been met.

The credible evidence presented indicates that the claimant was out on a medical leave of absence and returned to do light duty. The claimant became unable to do light duty and went out from work again. The claimant asked to have his leave extended until November 6, 2011, but the employer had exhausted all the

claimant's leave and was not able to fulfill the claimant's request. The claimant could not give the employer a definite return date though he hopes to return to work. The claimant exhausted all his options prior to resigning. Unfortunately, the claimant has failed to provide documentary evidence of his condition and his inability to continue to work for the employer. In the absence of that evidence, it is determined that the claimant has failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate valid circumstances within the meaning of the sections of law cited above.

### 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 October 9, 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 modified.

*K. Boettger*

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K. Boettger, 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: December 27, 2011  
DW/Specialist ID: USB2L  
Seq No: 001  
Copies mailed on January 20, 2012 to:  
TYRONE E. SMITH  
FEDERAL EXPRESS CORP  
LOCAL OFFICE #65  
ROBERT SAUER  
FEDERAL EXPRESS CORP