

**- DECISION -**

Claimant:  
RIVKA ROSSKAMM

Decision No.: 4563-BR-11

Date: September 19, 2011

Appeal No.: 1118191

Employer:  
NASSERI CLINIC OF ARTHRITIC &  
RHEUMATIC DISEASES LLC

S.S. No.:

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.

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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: October 19, 2011

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**REVIEW ON THE RECORD**

After a review on the record, the Board adopts the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant is a devout, orthodox Jew. One of the tenets of her religion is the strict observation of the Sabbath and of certain holidays. Part of this strict observation involves the practitioner engaging in no work from sunset of the night before the holiday. The employer knew the claimant's religion was an integral part of her life at the time she was hired, although the employer did not know the specific holidays the claimant was expected to observe.

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

"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 her appeal, the claimant disputes the accuracy and validity of the Findings of Fact and the Evaluation of Evidence sections of the decision. The Board has adopted the hearing examiner's supplemented Findings of Fact, but agrees with the claimant that the Evaluation of Evidence is in error.

In *Thomas v. Review Board of Indiana, 450 U.S. 707, 101 S.Ct. 1425 (1981)*, the Supreme Court held that where the duties of employment conflict with a sincerely held religious belief causing the employee to voluntarily quit, no penalty may be imposed under the unemployment insurance law. See also *Marshall v. Center Insurance Agency, Inc., 1299-BR-91*.

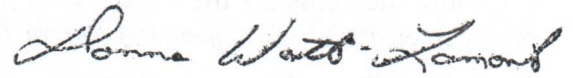
The uncontradicted evidence established that the claimant left this employment because her work days conflicted with her sincerely held religious beliefs. Under *Thomas* and *Marshall*, no penalty should be imposed.

The Board finds based on a preponderance of the credible evidence that the claimant meet her burden of demonstrating that she 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.

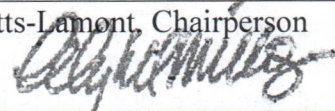
### DECISION

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 NASSERI CLINIC OF ARTHRITIC & RHEUMATIC DISEASES, LLC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

RIVKA ROSSKAMM

NASSERI CLINIC OF ARTHRITIC &

NASSERI CLINIC OF ARTHRITIC & PHEUMATIC DISEASES LLC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

RIVKA ROSSKAMM

SSN #

**Claimant**

vs.

NASSERI CLINIC OF ARTHRITIC &  
RHEUMATIC DISEASES LLC

**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: 1118191  
Appellant: Employer  
Local Office : 63 / CUMBERLAND  
CLAIM CENTER

June 16, 2011

**For the Claimant: PRESENT**

**For the Employer:**

**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**

Claimant Rivka Rosskamm worked for employer Nassari Clinic, LLC from January 4, 2011 through April 18, 2011. At separation, she served as a full time medical assistant, earning \$14 per hour. The claimant quit without notice to her employer to attend religious services.

The employer hired the claimant to work at either of its three area locations. The employer has a small staff, and workers do not have discretionary leave, such as vacation until after a year on the job. From the start, the employer respected the claimant's request for Friday absences dictated by her religion. When she was hired in January, the claimant did not mention the approach of Passover; instead, on March 21, she

asked for four days off to attend religious services. At the time, the employer had just enough staff to cover its patient needs, and the leave request was denied as presented and the claimant was offered one day off.

On the last work day before the start of services, the claimant was assigned to a satellite office, with one doctor and a non-medical worker. At the end of her shift, the claimant left work as if she intended to return the next day, but she did not return. The morning after her departure, the employer expected her to report to work and when she did not do so, a replacement had to be found, which was accomplished but at additional cost and concern to the employer. The claimant did not contact the office for the next two days, which is the employer's period for job abandonment. At the close of her second day without contacting the office, the claimant was removed from the payroll.

### 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." Allen, 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.

### EVALUATION OF EVIDENCE

The claimant had the burden to show, by a preponderance of the evidence, that she voluntarily quit her 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, that burden was met as to valid circumstances.

The claimant's right to practice her religion is inviolate, but the handling of her departure is not. Regardless of her intentions, she had a duty to her employer to indicate that she would be gone for at least two days so that preparations could be made to deal with her absence. Because she withheld information the employer needed to serve his clients, she imposed an avoidable cost on that employer. Those costs and inconvenience could have been avoided had she simply told the doctor she was working with that she would not appear and why. The declaration would have been sufficient for her to leave without blemish, which her secrecy imposed. It would have required no response and would not have affected her right to attend services. Given her lack of regard for the effect of her absence, the claimant voluntarily quit for valid circumstances.

The claimant demonstrated that the basis for her voluntary quit rose to the level needed to demonstrate valid circumstances

### DECISION

IT IS HELD THAT the claimant's unemployment was due to leaving work voluntarily without good cause, but with valid circumstances under the Md. Code Ann., Labor & Emp. Article, Section 8-1001. The claimant is disqualified for the week beginning April 17, 2011 and for the nine 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](mailto: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 Specialist is reversed.

*L. Brown*

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L. Brown, 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**

Any party 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 June 30, 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: June 03, 2011  
DAH/Specialist ID: WCU60  
Seq No: 002  
Copies mailed on June 16, 2011 to:  
RIVKA ROSSKAMM  
NASSERI CLINIC OF ARTHRITIC &



«ADDRESS1»

«ADDRESS2»

«ADDRESS3»

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«ADDRESS5»

**Zip code not valid!**