

- DECISION -

Claimant:
JOHN P KAIRIS

Decision No.: 5584-BR-11

Date: September 23, 2011

Appeal No.: 1112072

S.S. No.:

Employer:
COSTCO WHOLESALE CORP

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.

- 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 24, 2011

REVIEW ON THE RECORD

After a review on the record, the Board adopts the following findings of facts and conclusions of law. The decision of the hearing examiner is reversed.

The claimant, John Kairis began working for the employer, Costco Wholesale Corp., in August, 2010. The claimant worked in a part-time capacity as a stocker until October 31, 2010.

The claimant was involved in a non-work related car accident whereby he had a serious neck injury. The claimant continued to work for several months while rehabilitating from

the accident until on October 31, 2010, he was experiencing severe pain associated with the neck injury and the strenuous duties of his job.

On October 31, 2010, the claimant met with his manager, Steve Menago¹ to discuss the fact that the job was aggravating his injury. The claimant requested lighter duty at that time, perhaps in marketing or a cashier position and he was told by his manager that those positions were not available to him. The claimant was not informed by his manager of any other options, so he voluntarily quit his 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)*.

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

¹ The claimant requested a subpoena for Mr. Menago which was denied because he was an out of state witness. Instead, the employer's witnesses were Ms. Melissa Forbes, a human resources/payroll employee as well as Mr. Jim Burr, the assistant general manager of the store where the claimant was employed. Neither of these witnesses were present in the meeting with the claimant and Mr. Menago.

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).

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 Board has a long history of ruling that where a claimant suffers from a medical condition, their working conditions aggravate that condition, and the claimant had no reasonable alternative but to quit his/her job, the claimant's quit is for valid circumstances. *Pinkney v. Host International*, 142-BH-85; *Weaver v. Murray Corporation*, 57-BR-8.

In *Matheny v. May Department Stores, Inc.*, 644-BR-87, the Board held that where the claimant was unable to perform her duties because of severe arthritis, documented by her physician, and no transfer was available to her, the claimant's voluntary quit was for valid circumstances.

An illness that has no connection with the work may still be a valid circumstance if the illness is a necessitous or compelling reason to leave work, and there is no reasonable alternative to quitting. *Pearson v. Coca Cola Bottling Company*, 2040-BH-8.

Section 8-1001(c)(2) specifically 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 that health problem from a hospital or physician." Therefore, where the claimant fails to provide medical evidence of alleged stomach cramps caused by stress and overwork, neither good cause nor valid circumstances are supported. *Davis v. Maryland Homes for the Handicapped*, 25-BR-84.

The statute does not require evidence that a physician "directly advise" a claimant to quit employment. Therefore, where the claimant establishes that he or she is suffering from an ailment made worse by the work performed, valid circumstances may be supported. *Williams v. Prince George's County Board of Education*, 461-BR-85.

Although the hearing examiner may rely on hearsay evidence in making his determination, the hearing examiner must, "first carefully consider[] its reliability and probative value." *Travers v. Baltimore Police Dept.*, 115 Md. App. 395, 413 (1997). "The Court has remained steadfast in reminding agencies that to be admissible in an adjudicatory proceeding, hearsay evidence must demonstrate sufficient reliability and probative value to satisfy the requirements of procedural due process." *Id. at 411. See also Kade v.*

The Court's rejection of the administrative agency's use of hearsay evidence in *Kade* applies with equal force to the hearing examiner and the Board in this case.

In the instant case, the employer's case was entirely hearsay. The claimant credibly testified that he requested of his immediate manager a transfer to a lighter duty position prior to his voluntarily quitting his job. The manager told him that a position of that sort was not available to him. Neither of the employer's witnesses who were present at the hearing were with the claimant and Mr. Menago at the October 31, 2010, meeting. Neither could provide first-hand knowledge or testimony as to what the claimant was told or not told by management. The claimant was told he did not have any other alternatives but to voluntarily quit his job.

The second threshold requirement when medical reasons are at issue in a voluntary quit, is whether there is documentary evidence as to the claimant's medical condition. The claimant provided such documentary evidence to the Agency (*See, Claimant's Exhibits 1 through 5*). It is apparent that the claimant suffers from a severe neck injury that would cause a job lifting and stocking shelves to become difficult.

The Board finds that the claimant's injury was a necessitous and compelling reason for him to voluntarily quit his job and that he was not provided any other alternative but to quit.

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 should note that, provided that it has not elected to be a reimbursing employer pursuant to *Md. Code Ann., Lab. & Emp. Art. § 8-616*, 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)*.

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 31, 2010 and the four weeks immediately following.

The Hearing Examiner's decision is reversed.

Donna Watts-Lamont

Donna Watts-Lamont, Chairperson

Clayton A. Mitchell, Sr.

Clayton A. Mitchell, Sr., Associate Member

RD/mr

Copies mailed to:

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