

**- DECISION -**

Claimant:	Decision No.:	1200-BR-13
THOMAS A STRATTON	Date:	April 24, 2013
	Appeal No.:	1301897
	S.S. No.:	
Employer:	L.O. No.:	63
AMERICAN COMPUTER DEVELOPMENT INC	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.

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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: May 24, 2013

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**REVIEW OF THE RECORD**

After a review on the record, the Board adopts the following findings of fact. However, the Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

The claimant worked as a full time quality assurance technician for this employer from September 13, 2010 until November 16, 2012, earning \$21.50. The claimant voluntarily quit because he believed that his termination was imminent no matter what he did and the claimant did not want to have a job termination placed on his work history. (See Claimants Exhibit # 1)

In July of 2012, fifty percent of the employees in the claimant's quality assurance department were laid off. Prior to August 2012, the claimant had no disciplinary warnings.

In August a new plant manager was hired to turn the company around. In October 2012, the claimant was notified that he needed to reduce the monthly average "RMA" turnaround time. The claimant was given a warning.

At the end of October 2012, the claimant was given a second written warning that he needed to improve the turnaround time and develop a recovery plan by October 26, 2012. This task was to be accomplished with the claimant's assigned duties. The claimant believed that the manager set the "RMA" turn around as a priority for the claimant but did not provide the resources needed to accomplish the task.

In the claimant's second warning the claimant was advised that the claimant was subjected to corrective action up to and including termination if he did not meet the conditions set forth in the employee warning report. The claimant believed that he could not satisfy the plant manager and would be terminated. The claimant did not address his concerns with anyone else in the company. He quit because he believed that he was going to be terminated and he did not want a termination on his work history.

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)*.

"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.

Where a claimant quit because he feared that a discharge was imminent, but had not been informed that he was discharged, the resignation is without good cause or valid circumstances. *Roffe v. State of South Carolina Wateroe River Correction Institute*, 576-BR-88. The credible evidence established that the claimant thought that he was going to be discharged and resigned because he did not want a termination on his work history. The claimant did not establish that he had exhausted all reasonable alternatives before leaving work.

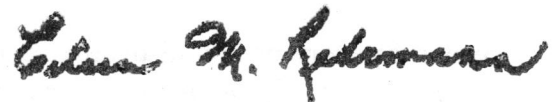
The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

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 *Maryland Annotated, Labor & Employment Article, § 8-1001*. The decision of the hearing examiner 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 November 4, 2012 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.



Eileen M. Rehrmann, Associate Member



Donna Watts-Lamont, Chairperson

VD

Copies mailed to:

THOMAS A. STRATTON  
AMERICAN COMPUTER DEVELOPMENT  
AMERICAN COMPUTER DEVELOPMENT  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

THOMAS A STRATTON

SSN #

**Claimant**

vs.

AMERICAN COMPUTER DEVELOPMENT  
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: 1301897  
Appellant: Claimant  
Local Office : 63 / CUMBERLAND  
CLAIM CENTER

February 15, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , AMANDA HUFFER

**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, Thomas Stratton, began working for this employer, American Computer Development Inc., on September 13, 2010, and his last day worked was November 16, 2012. At the time of his voluntary quit, the claimant worked full-time as a quality assurance technician, earning an hourly salary of \$21.50. The claimant voluntarily quit his position with this employer because his supervisor gave the claimant assignments that were impossible to complete within the time allotted and unfairly disciplined the claimant for the same.

The claimant worked for the employer without any incident or without receiving any discipline for two years. The claimant's most recent evaluation before his separation from work gave the claimant a "4" on a one to five rating with five being the highest, in several areas including completing his work with high quality and being technically competent. The evaluation also stated the claimant was good at multi-tasking and completing his assignments by or before deadline.

In July 2012, the employer laid off 50% of the employees in the quality assurance department to which the claimant was assigned. In August 2012, the employer hired Dereck Moore as its new plant manager, at which time the employer began disciplining the claimant. When Mr. Moore first came on board, he instructed the claimant to have a turnaround time of ten days on items returned from customers for repair. The claimant agreed that the turnaround time could be improved based on the claimant's workload at the time.

Mr. Moore subsequently informed the claimant that he was to focus on production orders (which are new orders) and not to concentrate on orders returned to the employer for repair, designated as "RMA's." The claimant followed Mr. Moore's instruction, giving 100% of his time to a new product line called "Euro Tech in August and September 2012, as the new product line required all of the claimant's attention. Despite Mr. Moore's instruction to focus on new products, Mr. Moore subsequently gave the claimant a warning on October 1, 2012 concerning the claimant's poor performance in reducing the "turn around" time in getting RMA's back to the customers.

The claimant asked the manager of RMA's to speed up the manager's part of the process in an effort to increase the turnaround time of the RMA's and comply with Mr. Moore's October 1, 2012 warning. Although the manager agreed to the claimant's request, Mr. Moore refused to allow the manager to speed up the work in the manager's department.

Also after the employer warned the claimant, the claimant requested additional hours of work in order that the claimant would have time to inspect the RMA's as well as work on the new products. The claimant averaged working fifty hours each week before Mr. Moore's arrival. Mr. Moore reduced the claimant's hours to forty hours each week. Mr. Moore refused the claimant's request for additional time to inspect the products returned for repair.

On October 31, 2012, the employer issued a second written warning to the claimant for the latter's failure to decrease the turnaround time of the RMS's. (EM EX #2). The weekend prior to receiving the warning, the claimant asked Mr. Moore for assistance in decreasing the turnaround time, which Mr. Moore refused to do.

The claimant tendered his resignation on November 5, 2012. The claimant resigned because he "...could tell that the termination was eminent no matter what I would do and I did not want to have a job termination put on my work history record." The claimant established that the employer had a second round of layoffs within two weeks of the claimant's notice of resignation.

### **CONCLUSIONS OF LAW**

Md. Code Ann., Labor & Emp. Article, Section 8-1001, states 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 the actions of the employer, or without valid



circumstances. A circumstance is valid only if it is (i) a substantial cause directly attributable to, arising from, or connected with conditions of employment or the actions of the employing unit; or (ii) of such necessitous or compelling nature the individual has no reasonable alternative other than leaving the employment.

### EVALUATION OF THE EVIDENCE

The claimant had the burden to show, by a preponderance of the credible evidence, he voluntarily quit his position with this employer for reasons which constitute either good cause or valid circumstances, pursuant to the Maryland Unemployment Insurance Law. (Hargrove v. City of Baltimore, 2033-BH-83). In the case at bar, the claimant met this burden.

Quitting a job because the employer is discriminating against an employee or subjecting him or her to harassment is generally for good cause. The Board of Appeals applied this principle in Woerner v. White Marsh Mall, Inc., 2159-BR-92, holding "The employer's disciplinary action was taken in bad faith. Just as an employee has a basic duty of loyalty toward her employer, an employer has a basic duty to treat an employee in good faith. Where this duty is violated in regard to disciplinary procedures, good cause is established."

Similarly, in the case at bar, the employer did not act in good faith in imposing the disciplinary measures concerning the claimant. Mr. Moore gave specific instructions to the claimant to focus his inspections on new products, at the same time that he was disciplining the claimant for the turnaround time on returned products. The claimant's most recent evaluation which was prior to Mr. Moore's arrival, was at odds with the disciplinary measures, as the claimant was rated as an extremely diligent and capable employee. Mr. Moore also declined the claimant's requests to improve the turnaround time by failing to provide assistance to the claimant, refusing to permit the claimant to work in excess of forty hours per week despite the fact Mr. Moore had decreased the claimant's hours from fifty to forty, and prohibiting the manager of the RMS's to speed up that part of the process.

With the backdrop of the fact the employer had two rounds of layoffs within six months, the latter layoff coming within two weeks of claimant's resignation, it is held that the claimant established good cause for his resignation.

Accordingly, I hold the claimant met his burden this case and the claimant's voluntary quit was for good cause and benefits are, therefore, allowed.

### DECISION

IT IS HELD the claimant left the employment voluntarily, but with good cause within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1001. No disqualification is imposed based upon this separation from employment. The claimant is eligible for benefits so long as all 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 1-800-827-44.

The determination of the Claim Specialist is reversed.



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G R Smith, 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 March 04, 2013. 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 05,2013

CH/Specialist ID: WCU3P

Seq No: 001

Copies mailed on February 15, 2013 to:

THOMAS A. STRATTON

AMERICAN COMPUTER DEVELOPMENT

LOCAL OFFICE #63

AMERICAN COMPUTER DEVELOPMENT