

**- DECISION -**

Claimant:  
BRENDA S SINGLETON

Decision No.: 6075-BR-11

Date: October 21, 2011

Appeal No.: 1126483

S.S. No.:

Employer:  
ANAHITA ABDEHOU DDS PC

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: November 21, 2011

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**REVIEW ON THE RECORD**

After a review on the record, the Board adopts the first two paragraphs of the hearing examiner's findings of fact, but rejects the remainder of the findings. The Board makes the following additional findings of fact:

The claimant and the employer agreed to what they called a "working interview". This process consisted of the claimant actually working with the employer for a few days while each decided if an employment relationship would be feasible. The employer agreed to pay the claimant for this period of time, but made no job offer. The employer would only consider hiring the claimant if her skills were comparable to her resume and if the claimant could pass a routine background check.

As a result of the background check, the employer learned that the claimant did not possess an actual certification as a Dental Assistant. The employer did not wish to hire anyone without this certificate and the claimant did not wish to invest the time for additional training to obtain a certificate. The employer paid the claimant for the time she spent in three days of working interviews, but did not offer the claimant a position as a Dental Assistant.

The Board concludes that the facts, as supplemented, 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 09.32.06.02(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 reverses 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).*

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*.

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*.

Here, the claimant did not quit this employment. There was only an agreement that the claimant would participate in three days of working interview prior to any job offer or acceptance. The working interview was similar to a series of skills assessments, or aptitude tests, in conjunction with questions for the claimant. This employment was of limited duration by its own terms. The job for which the claimant was paid, three days of working interviews, ended of its own accord and not because of some action by the claimant. As such, this was a discharge. And, because the employment ended at a specified, pre-arranged time, there was no additional work for the claimant. This situation is comparable to a lay-off due to a lack of work.

In actuality, the claimant was hired for a three-day assignment – to work with the employer while interviewing for a position. The claimant worked through that period and was paid for that period. There was no more work at the end of the third day of the working interview. The claimant performed her required duties during this three-day period without incident. The arrangement allowed for the employer to make an offer of employment at the end of the interview period, but the employer chose not to do so because the claimant did not have the certification the employer preferred.

Whether the employer offered other positions to the claimant and whether the claimant declined any of these positions were not at issue here. The only issue was whether the claimant’s separation was disqualifying. Because the employment ended by its own terms, the separation was not disqualifying. The claimant is entitled to benefits for the weeks claimed if she is otherwise eligible.

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 employer has not met its burden of demonstrating that the claimant's actions rose to the level of gross misconduct within the meaning of § 8-1002. The employer has also not met its burden of showing that the claimant's discharge was for misconduct within the meaning of § 8-1003. The decision shall be reversed for the reasons stated herein.

### DECISION

It is held that the claimant was discharged, but not for gross misconduct or misconduct connected with the work, within the meaning of Maryland Code Annotated, Labor and Employment Article, Title 8, Section 1002 or 1003. No disqualification is imposed based upon the claimant's separation from employment with ANAHITA ABDEHOU, DDS PC.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

RD

Copies mailed to:

BRENDA S. SINGLETON  
ANAHITA ABDEHOU DDS PC  
RANDOLPH C. KNEPPER  
Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

BRENDA S SINGLETON

SSN #

**Claimant**

vs.

ANAHITA ABDEHOU DDS PC

**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: 1126483  
Appellant: Employer  
Local Office : 63 / CUMBERLAND  
CLAIM CENTER

September 01, 2011

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , ANAHITA ABDEHOU, NAJES SABIRFAND

**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 Brenda Singleton worked approximately three days for Anahita Abdehou DDS, the employer in this case. The claimant's last day of work was May 25, 2011. The claimant applied to Dr. Abdehou's advertisement seeking highly motivated "fulltime and part time staff" who have excellent computer skills, xray certification and three years experience.

The claimant sent her resume to the employer. The resume stated the claimant has assisted with "four handed" dentistry that included making temporary crowns. The claimant's resume also stated the claimant had experience in root canals, post and core crowns, veneers, bonding, bridges and simple extractions. The

claimant's resume stated that the claimant had an x-ray certification. The xray certification was the only certificate listed on the claimant's resume.

During the employer's interview with the claimant, the claimant represented that she had thirty-six years of experience as a chair side assistant. The claimant also told the employer that she was "CDA" or an expanded duty assistant. The claimant denied telling the employer that she held CDA license. The claimant also presented a letter of recommendation to Dr. Abdehou from one of the claimant's prior employer that stated the claimant is able to handle any task one can delegate under the Maryland. The letter also stated the claimant is proficient in fabrication of temporary crowns and bridges and that the claimant had substantial experience in digital radiography.

At the start of the claimant's employment, Dr. Abedou tried to obtain the claimant's CDA certification number but was unsuccessful in retrieving the claimant's number. It was only at this point the claimant told Dr. Abdehou that the claimant did not have a CDA.

As Dr. Abdehou wanted the claimant to continue her employment, Dr. Abdehou asked if the claimant could perform the tasks of the receptionist desk while the claimant obtained a CDA. Dr. Abdehou also offered to the claimant an opportunity to work at the employer's side and perform suctioning of the patients and other duties the claimant could do without having a CDA license.

The claimant replied that she was not interested in taking the thirty six hours of training necessary to obtain her CDA license. The claimant also rejected the employer's offer to limit the job to suction the patients, the claimant stating that she wanted to perform all the duties claimant performed for past employers. As the tasks the claimant performed for past employers required CDA certification, the employer was unwilling to have the claimant perform these job duties. If the claimant performed the duties desired by the claimant, the employer would jeopardize its license. The employer did not terminate the claimant but was unwilling to allow the claimant to perform the duties requested by the claimant as the claimant was unlicensed for the same.

## **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.

## 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, claimant failed to meet this burden.

The advertisement to which the claimant responded stated the applicant was to have x-ray certification. The advertisement did not mention the applicant was required to have any other license. The employer reasonably assumed that it was the case, i.e., that the claimant held a CDA license from the many tasks the claimant listed as being proficient that required the claimant to have a CDA license. The claimant also presented a letter of recommendation that stated the claimant was proficient in all tasks delegable under Maryland law.

Once the employer was unable to obtain the number of claimant's CDA license, the claimant told the employer that she did not have this kind of license. The claimant denied stating during the interview that she held a CDA of license. While the claimant may not have specifically stated during the interview that she held a CDA license, a claim denied by the employer, the employer reasonably relied on the claimant's representation that she had this license for the reasons stated above. Moreover the employer attempted to retrieve the claimant's license number after the interview, which the employer would not have expanded time doing so unless the claimant represented during the interview that she held this type of license.

After obtaining this information, the employer did not terminate the claimant. Rather, the employer offered two different types of accommodation to the claimant to keep the claimant employed. The claimant rejected both offers stating that she did not want to train to obtain the CDA license. At the same time, the claimant wanted to perform all the duties she performed in the past even if those duties required a CDA license.

What the claimant desired was not possible and in fact, violated State law. For these reasons, the claimant voluntarily resigned without good cause or valid circumstances.

## 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 May 22, 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 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 September 16, 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 : August 15,2011

CH/Specialist ID: WCU4D

Seq No: 003

Copies mailed on September 01, 2011 to:

BRENDA S. SINGLETON

ANAHITA ABDEHOU DDS PC

LOCAL OFFICE #63

RANDOLPH C. KNEPPER