

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

| | | |
|---|--|----------------------------------|
| <p>A.B. Appellant/Claimant</p> <p style="text-align:center">v.</p> <p>LOCAL COMPANY Appellee/Employer</p> | | <p>Case No.: 2012-DOES-00830</p> |
|---|--|----------------------------------|

FINAL ORDER

I. INTRODUCTION

- A. Parties:** A.B. (“Claimant”) and Local Company (“Employer”). Claimant represented himself. Human Resource Manager B.C. represented Employer.
- B. Relevant Statutory Provisions:** District of Columbia Unemployment Compensation Act (“Act”), D.C. Official Code §§ 51-111(b) (timeliness of appeal) and 51-110 (reasons for disqualification).
- C. Issue Presented:** Is Claimant disqualified from receiving unemployment benefits because of the reason for Claimant’s separation from employment?
- D. Date and Time of Evidentiary Hearing:** June 4, 2012, at 10:45 a.m.
- E. Witnesses:** B.C., Sales Manager C.D., and Claimant.
- F. Exhibits Received into Evidence:** Claimant’s exhibits 100-105 and Employer’s exhibits 200-202.
- G. Result:** The Determination is affirmed. Claimant remains disqualified from receiving unemployment compensation benefits.

II. JURISDICTION

The appeal was timely, based on its filing date and the mailing date of the Claims Examiner's Determination.¹ Jurisdiction is established.

III. FINDINGS OF FACT

1. Employer distributes different brands of beer to stores throughout the metropolitan area. Claimant worked for Employer as a Merchandiser from August 19, 2011, until March 4, 2012.

2. Claimant worked at grocery stores in the District of Columbia. Claimant worked from Thursday to Monday with Tuesday and Wednesday off. Claimant wanted to work Mondays through Fridays, with Saturday and Sunday off. Claimant was responsible for moving beer from storage to the display racks in the stores. Exhibit 100. On a weekend, at a large store, Claimant might have to move 200 cases of beer to the display racks. Although he was given carts to use, it was strenuous, physically-demanding work. *Id.* (employees may have to "lift products from 25 lbs. to 50 lbs. on a regular basis and up to 170 lbs. when handling keg products.").

3. Stores frequently stacked beer cases too high for Claimant to safely retrieve them, or stored other product in front of or around the beer, such that Claimant, who could not move the other product, would have to climb over the other product to reach the beer. Exhibit 105. Whenever Claimant told Sales Manager C.D. about unsafe conditions (beer stacked too high, or beer surrounded by other product), C.D. told Claimant to raise the matter directly with the store management, that store personnel would have to rectify the situation, that safety was the first consideration, and Claimant should not do anything he considered unsafe. *See* exhibit 104, Employee Handbook (Safe Work Practices). Claimant only raised safety concerns with C.D. once or twice.

4. Claimant started to have physical ailments associated with the demands of the job. Every time he raised a problem with C.D., he agreed to have a colleague cover Claimant's route so that Claimant could "get some rest." Exhibit 101. If Claimant told C.D. he was sick, C.D. would arrange for Claimant to have time off, because Claimant "need[ed] to get better." *Id.*

¹ D.C. Official Code § 51-111(b); OAH Rules 2812.3 and 2983.1.

Although C.D. would arrange for Claimant to be off, Claimant would frequently work anyway, choosing to “tough it out for the team” *Id.*

5. On Sunday, February 19, 2012, Claimant sent C.D. a text message asking him not to answer his telephone, so he (Claimant) could leave C.D. a voicemail message. Claimant then called C.D.’s telephone and left a voicemail message. Exhibits 200 and 201. In the message, Claimant expressed concern about the long hours he worked and not being appreciated “in the field,” so he said “I really like you, I love the company, I will save us all a headache. I think maybe the best thing for me to do is just finish out the month with the same level of professionalism that I have executed the entire time I have been there.” Claimant also expressed frustration with not having weekends off which prevented him from seeing his kids. Claimant continued “I don’t know if this is going to work for me. I didn’t really articulate that very well,” but later I will send a written statement to the appropriate people to “save you the trouble of having to deal with this on Monday morning.” Exhibit 200.

6. On Monday, February 20, 2012, C.D. played Claimant’s message to Human Resource Manager B.C. They agreed to accept Claimant’s resignation. After their meeting, C.D. called Claimant, who was at work, and said we need your letter of resignation. Claimant said he was busy, but that he would get it to C.D. Claimant was off on Tuesday and Wednesday (February 21 and 22) and did not submit a letter of resignation by the time he reported to work on Thursday.

7. On Friday, February 24, 2012, C.D. tracked Claimant down at a client site. C.D. reminded Claimant that Employer wanted a letter of resignation. Claimant was having second thoughts and told C.D. he did not want to leave Employer. C.D. said management had listened to Claimant’s message and decided to hold Claimant to his resignation. C.D. said that Claimant’s last day would be March 4, 2012.

8. Claimant refused to sign a letter of resignation. Exhibit 202. Employer deemed Claimant’s resignation effective March 4, 2012. *Id.* At the time Claimant called C.D., Employer had work available for Claimant and there was no disciplinary action pending against him.

IV. DISCUSSION AND CONCLUSIONS OF LAW

An unemployed individual who meets certain statutory eligibility requirements is generally qualified to receive unemployment benefits. D.C. Official Code § 51-109. There are several exceptions. D.C. Official Code § 51-110. For example, if an employee voluntarily leaves his or her most recent work without good cause connected with the work, the employee is disqualified from receiving benefits. D.C. Official Code § 51-110(a), 7 District of Columbia Municipal Regulations (“DCMR”) 311.

An employee’s leaving work is presumed to be involuntary. 7 DCMR 311.3; *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749 (D.C. 2008). The presumption is overcome if the employee “acknowledges that the leaving was voluntary or the employer presents evidence sufficient to support a finding . . . that the leaving was voluntary.” 7 DCMR 311.3; see *Coalition for the Homeless v. D.C. Dep’t of Emp’t Servs.*, 653 A.2d 374, 376 (D.C. 1995). A leaving is “voluntary” if it is “voluntary in fact, within the ordinary meaning of the word ‘voluntary.’” 7 DCMR 311.2; see *Cruz v. D.C. Dep’t of Emp’t Servs.*, 633 A.2d 66, 70 (D.C. 1993) (quoting 7 DCMR 311.2).

Once an employee seeking unemployment benefits acknowledges, or an employer establishes, that a leaving was voluntary, then the employee bears the burden of proving that the voluntary leaving arose from “good cause connected with the work.” 7 DCMR 311.4; *Branson v. D.C. Dep’t of Emp’t Servs.*, 801 A.2d 975, 978 (D.C. 2002). The test of “good cause connected with the work” is factual in nature and turns on what a “reasonable and prudent person in the labor market” would do under similar circumstances. *Cruz v. D.C. Dep’t of Emp’t Serv.*, 633 A.2d 66, 69 (D.C. 1993). The governing regulations enumerate specific examples of what does and does not constitute “good cause connected with the work.” 7 DCMR 311.6, 311.7.

Employer took the position that Claimant’s February 19, 2012, voicemail message was a voluntary resignation and that Claimant confirmed his intent to resign by agreeing on February 20, 2012, to submit a letter of resignation. Exhibit 200. Claimant denied that he intended to resign, and countered that even if I considered his voicemail message to be a voluntary quit he sought to rescind that resignation and had good cause for quitting (dangerous work conditions). I have listened to the recording of Claimant’s voicemail message, which comes with a notarized Affidavit of Authenticity from a third-party production company, and conclude that Employer

reasonably understood Claimant to be quitting.² On February 20, 2012, Claimant reinforced his intention to resign by re-affirming to Sales Manager C.D. that he would submit a letter of resignation.

I have considered whether Claimant's ultimate refusal to sign a letter of resignation casts his voicemail message on Sunday, February 19, 2012, in the light of nothing more than frustrated venting. But I conclude that Claimant voluntarily quit as that term is defined by the pertinent regulations. 7 DCMR 311.3; *Cruz*, 633 A.2d at 70. I think Claimant intended to resign and later had second thoughts (thus refusing to sign the letter of resignation), or may be Claimant hoped that his resignation would prompt remedial steps by Employer (giving him weekends off). Once Claimant voluntarily resigned, however, Employer was under no obligation to allow him to rescind his resignation. *Wright v. D.C. Dep't of Emp't Servs.*, 560 A.2d 509, 513 (D.C. 1989).

That leaves the question whether Claimant resigned for good cause connected with the work. 7 DCMR 311.4. As noted above, the test of "good cause connected with the work" is factual in nature and turns on what a "reasonable and prudent person in the labor market" would do under similar circumstances. Here Claimant took a job knowing that it was physically demanding and strenuous. As the Merchandiser Position Description states the incumbent must be able to "lift products from 25 lbs. to 50 lbs. on a regular basis and up to 170 lbs. when handling keg products." Exhibit 100. Claimant encountered problems in some stores where store management created unsafe conditions, as compared to something Employer created. Exhibit 101 and 105. By his own admission, Claimant only raised these conditions with C.D. once or twice. And each time C.D. told Claimant to raise the matter directly with the store management, that store personnel would have to rectify the situation, that safety was the first consideration, and that Claimant should not do anything he considered unsafe. Exhibits 101 and 104 (Employee Handbook - Safe Work Practices). At no point in time did C.D. require or urge Claimant to engage in any activity Claimant believed to be unsafe. Although it does appear that on occasion Claimant did just that because he wanted to be a good team player.

I conclude that Claimant has failed to establish by a preponderance of evidence that he was "working in unsafe locations or under unsafe conditions." 7 DCMR 311.7(d). Rather, Claimant had a difficult job that required a strong enough constitution to lift the heavy loads and

² Claimant did not challenge the veracity of the recording admitted into evidence.

challenge store managers who might not have wanted to use staff to move product to make Claimant's job safe. But these conditions do not make his work environment "unsafe." I conclude Claimant voluntarily quit due to "general dissatisfaction with work," and "personal or domestic responsibilities" (laudably he wanted to spend more time with his children). 7 DCMR 311.6(e) and (g).

Consequently, the Determination is affirmed. Claimant remains disqualified from receiving unemployment benefits.

V. ORDER

Based upon the foregoing and the record in this matter, it is:

ORDERED, that the Claims Examiner's Determination is **AFFIRMED**; it is further

ORDERED, that Claimant is **DISQUALIFIED** from receiving unemployment compensation benefits; and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

DATED: June 11, 2012

Jesse P. Goode
Administrative Law Judge