

02/22/2022

JONATHAN BUTLER, ESQ.  
9701 APOLLO DRIVE  
SUITE 100  
UPPER MARLBORO MD 20774



39903990

**Claimant:**  
NELDA E FINK



**Appeal No:** 2123148  
**S.S. No:** XXX-XX-4109

**Appellant:** Claimant

**Employer:**  
PEVCO SYSTEMS INTERNATIONAL INC  
1401 TANGIER DR  
MIDDLE RIVER MARYLAND 21220-2876

**LOWER APPEALS DECISION**  
**WARNING: IT IS IMPORTANT TO READ ALL PAGES OF THIS NOTICE**

ESTO ES UN DOCUMENTO LEGAL IMPORTANTE CON RESPECTO A SU DERECHO DE RECIBIR LOS BENEFICIOS DEL SEGURO DEL DESEMPLEO. CONTIENE FECHAS CON QUALES USTED TIENE QUE CUMPLIR PARA ASEGURAR SUS DERECHOS. SI USTED TIENE DIFICULTAD COMPRENDIENDO ESTE DOCUMENTO EN INGLES, POR FAVOR LLAME (301) 313-8000 INMEDIATAMENTE

**For the Claimant:** JONATHAN BUTLER, ESQ., NELDA FINK  
**For the Employer:** MELISSA LYNCH, PEVCO SYSTEMS INTERNATIONAL INC

**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).

**PREAMBLE**

On October 1, 2021 at 9:00 am, a hearing was held in this matter. On October 12, 2021, A. Scheinberg, Esq., issued an Unemployment Insurance Appeals Decision. The appellant/claimant filed a timely appeal to the Board of Appeals. The Board of Appeals, in a Remand Order dated November 10, 2021, remanded this matter to Lower Appeals for a *de novo* hearing in a prompt manner.

### FINDINGS OF FACT

The claimant, Nelda E. Fink, began working for this employer, Pevco Systems International, Inc., on September 23, 2009 and her last day worked was May 12, 2021. At the time of her separation, the claimant worked full-time as a Systems Analyst, earning an annual salary of \$110,000.00.

On November 18, 2020, Melissa Lynch, Human Resources Manager, advised employees that the employer was instituting a policy that required mandatory social distancing and wearing masks while in the warehouse. The claimant was aware of the policy. (See Employer Exhibit 1). On March 1, 2020, the claimant advised the employer that she had a serious medical condition that prevented her from wearing a face mask. In an effort to determine whether the employer could provide reasonable accommodations, the employer requested that the claimant provide medical documentation of her serious medical condition. (See Employer Exhibit 2). On March 3, 2021, Dr. MaryAnn Ley, the claimant's medical professional, indicated that the claimant refrain from wearing a face covering because it would impede the claimant's ability to breathe and function optimally. (See Employer Exhibit 3). On March 17, 2021, the employer requested that Dr. Ley provide additional medical information regarding the claimant's serious medical condition. (See Employer Exhibit 4). On March 30, 2021, Dr. Ley deferred to the claimant to provide additional medical information. (See Employer Exhibit 5). The claimant declined to provide any additional medical information.

As of May 12, 2021, the employer was unable and/or unwilling to accommodate the claimant. Although the claimant did not indicate she wanted to separate from this employment, as of May 12, 2020, she intended not to comply with the employer's mask mandate for an indefinable period.

The employer did not formally express any dissatisfaction with the claimant's work. The employer did not formally discipline the claimant regarding the performance of her duties. The claimant's job was not in jeopardy at the time of her separation and continuing work was available.

### CONCLUSIONS OF LAW

Maryland Code Annotated, Labor and Employment Article, § 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.

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. The claimant voluntarily resigned from his position due to a serious, documented medical reason. Pearson v. Coca Cola Bottling Company, 2040-BH-83.

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 the health problem neither good cause nor valid circumstances are supported. Davis v. Maryland Homes for the Handicapped, 25-BR-84.

There is no requirement under Section 8-1001(c)(2) that the medical document state that the claimant's physician specifically advised her to quit the employment. Miles v. Patriarch, Inc. 1982-BR-93.

### EVALUATION OF THE EVIDENCE

This matter initially presented itself as a discharge; however, the parties' uncontested, credible testimony supports a finding of voluntary quit. Accordingly, this matter will be treated as a voluntary quit for the allocation of the burden of proof.

39903990

The claimant had the burden to show, by a preponderance of the credible evidence, she voluntarily quit her 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. The claimant has not met this burden.

The claimant voluntarily quit her position because she declined to comply with the employer's mask mandate to protect her health. The claimant quit for personal, undocumented medical reasons. The claimant was provided the opportunity to provide documentary evidence of her health problem but repeatedly declined. During the hearing of this matter, the claimant was provided an opportunity to divulge the serious health condition identified in her medical provider's correspondence. The claimant declined. The claimant has failed submit a written statement or other documentary evidence **of a health problem** [emphasis added] from a hospital or physician. Where the claimant fails to provide medical evidence of a health problem neither good cause nor valid circumstances are supported. Davis supra. In addition, there is no evidence the claimant explored any reasonable alternatives to her voluntary quit. The claimant has failed to produce sufficient evidence that she voluntarily quit the employment for either good cause or valid circumstances within the meaning of the Maryland Unemployment Insurance Law.

Accordingly, I hold the claimant failed to meet her burden in this case and the claimant's voluntary quit was neither for good cause nor due to a valid circumstance, and benefits are, therefore, denied.

### 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 Maryland Code Annotated, Labor and Employment Article, § 8-1001 (Supp. 1996). Benefits are denied for the week beginning May 9, 2021 and until the claimant becomes re-employed 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 claimant may contact Claimant Information Service with any questions regarding benefits at (667) 207-6520 for a live agent or visit the Agency website ([www.labor.maryland.gov/UIHelp](http://www.labor.maryland.gov/UIHelp)) for more information.

The determination of the Claims Specialist is reversed.



D. CAMPER ESQ., HEARING EXAMINER

### Notice to Claimants of Right to Request Waiver of Overpayment

The Department of Labor 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 410-949-0022 or 1-800-827-4839. 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.

### Notice of Right of Further Appeal / Petition for review

Any party aggrieved by this decision may file a further appeal. The deadline for filing an appeal is 03/09/2022. The address and facsimile number for submission of an appeal are:

Board of Appeals  
Maryland Department of Labor  
1100 N. Eutaw Street, Room 515  
Baltimore, MD 21201  
Fax (410) 767-2787

Appeals may be submitted online through the appellant's portal or via mail, Fax or in-person. Note: An appeal filed by mail is considered timely if the U. S. Postal Service postmark date is on or before the deadline date given above.

**Date of hearing:** Monday, February 14, 2022 at 01:45 PM EST

**Copies of this Decision were provided to:**

NELDA E FINK (Claimant)

PEVCO SYSTEMS INTERNATIONAL INC

JONATHAN BUTLER, ESQ. (Claimant Representative)

39903990