

**- DECISION -**

Claimant:  
SCOTT J WOLK

Decision No.: 1020-BR-13

Date: April 19, 2013

Appeal No.: 1241318

S.S. No.:

Employer:  
U.S. POSTAL SERVICE

L.O. No.: 60

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: May 19, 2013

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the first paragraph of the hearing examiner's findings of fact. The Board makes the following additional findings of fact:

The claimant began working for the U. S. Postal Service, in Frederick, MD, on June 19, 2012, as a general worker. The claimant wanted to move to Delaware for personal reasons and sought a transfer to a different Post Office nearer his intended area of residence. The claimant arranged to transfer to the Post Office in Milford, DE, after the audit was completed on that facility. The Postmaster in Milford advised the claimant he could plan to start on October 27, 2012.

The claimant last worked in the Frederick office on October 19, 2012. When the claimant went to the Milford office on October 26, 2012, the Postmaster informed him that the audit required that facility to eliminate a route and, consequently, he had no position into which the claimant could transfer. The claimant could not return to his former position in Frederick and became unemployed at that time.

The Board concludes that these facts 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 09.32.06.03(E)(1)*.

A threshold issue in this case is whether the claimant voluntarily quit or whether the claimant was discharged. The Board reverses the hearing examiner on this question. The claimant never stopped working for the U. S. Postal Service until October 26, 2012, when the Milford, DE Postmaster advised him that he had no position into which the claimant could transfer. The claimant did not quit working for the U. S. Postal Service. The claimant transferred from the Frederick, MD facility to the Milford, DE facility, but before he could actually begin working, the Milford office had to reduce its workforce and the claimant had no position into which he could move. The employer, in essence, cancelled the claimant's transfer from one facility to another. In so doing, the employer initiated the separation and rendered the claimant unemployed. Thus, this was a discharge.

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*.

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*.

Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

The term "misconduct" as used in the statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of employment or on the employer's premises, within the meaning of Section 8-1003 of the Labor and Employment Article. (*See, Rogers v. Radio Shack, 271 Md. 126, 314 A.2d 113*).

Simple misconduct within the meaning of §8-1003 does not require intentional misbehavior. *DLLR v. Hider, 349 Md. 71 (1998)*; also see *Johns Hopkins University v. Board of Labor, Licensing and Regulation, 134 Md. App. 653, 662-63 (2000)*(psychiatric condition which prevented claimant from conforming his/her conduct to accepted norms did not except that conduct from the category of misconduct under §8-1003). Misconduct must be connected with the work; the mere fact that misconduct adversely affects the employer’s interests is not enough. *Fino v. Maryland Emp. Sec. Bd., 218 Md. 504 (1959)*. Although not sufficient in itself, a breach of duty to an employer is an essential element to make an act connected with the work. *Empl. Sec. Bd. v. LeCates, 218 Md. 202 (1958)*. Misconduct, however, need not occur during the hours of employment or the employer’s premises. *Id.*

Without sufficient evidence of a willful and wanton disregard of an employee’s obligations or gross indifference to the employer’s interests, there can be no finding of gross misconduct. *Lehman v. Baker Protective Services, Inc., 221-BR-89*. Where a showing of gross misconduct is based on a single action, the employer must show the employee demonstrated gross indifference to the employer’s interests. *DLLR v. Muddiman, 120 Md. App. 725, 737 (1998)*.

In determining whether an employee has committed gross misconduct, “[t]he important element to be considered is the nature of the misconduct and how seriously it affects the claimant’s employment or the employer’s rights.” *Dept. of Econ. & Empl. Dev. v. Jones, 79 Md. App. 531, 536 (1989)*. “It is also proper to note that what is ‘deliberate and willful misconduct’ will vary with each particular case. Here we ‘are not looking simply for substandard conduct...but for a willful or wanton state of mind accompanying the engaging in substandard conduct.’” *Employment Sec. Bd. v. LeCates, 218 Md. 202, 207 (1958)*(internal citation omitted); also see *Hernandez v. DLLR, 122 Md. App. 19, 25 (1998)*.

Aggravated misconduct is an amplification of gross misconduct where the claimant engages in “behavior committed with actual malice and deliberate disregard for the property, safety or life of others that...affects the employer, fellow employees, subcontractors, invitees of the employer, members of the

public, or the ultimate consumer of the employer's products or services...and consists of either a physical assault or property loss so serious that the penalties of misconduct or gross misconduct are not sufficient."

In his appeal, the claimant reiterates his testimony from the hearing. Because the Board is reversing this matter, in the claimant's favor, the Board will not specifically address all of the claimant's contentions of error.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. Both parties appeared and testified. Both parties were given the opportunity to cross-examine opposing witnesses and to offer and object to documentary evidence. Both parties were offered closing statements. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter.

The Board has thoroughly reviewed the record from the hearing, but disagrees with the hearing examiner's conclusions and decision. The claimant did not voluntarily leave his employment. The claimant voluntarily transferred from one facility within the employer's overall system to another facility. At all times the claimant remained employed by the U. S. Postal Service. It was not until the claimant reported to his new facility that he was advised he could not begin working there. Circumstances had changed between the time the claimant was approved for the transfer and the time he reported for duty. The employer initiated the separation for reasons which were unrelated to the claimant or his conduct. This was a lay-off, due to a lack of available work. As such, it was a non-disqualifying discharge.

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 or misconduct within the meaning of §§8-1002 or 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 U.S. POSTAL SERVICE.

The Hearing Examiner's decision is reversed.



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Eileen M. Rehrmann, Associate Member



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Donna Watts-Lamont, Chairperson

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Copies mailed to:

SCOTT J. WOLK

U.S. POSTAL SERVICE

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

SCOTT J WOLK

SSN #

**Claimant**

vs.

U.S. POSTAL SERVICE

**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: 1241318  
Appellant: Employer  
Local Office : 60 / LARGO

January 15, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT , KAREN CREDE

**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**

The claimant, Scott J. Wolk, filed a claim for benefits establishing a benefit year beginning October 14, 2012. He qualified for a weekly benefit amount of \$370.00.

The claimant worked for this employer, U.S. Postal Service, from June 19, 2012 to October 19, 2012. He worked at the Frederick, Maryland location. At the time he voluntarily quit, he was working as a worker.

The claimant wished to live in Delaware near his family. He was not told by the postmaster in Frederick, Maryland that he had received a transfer to Milford Delaware. He moved to the area surrounding Milford, Delaware. He then entered the Milford, Delaware Post Office and spoke to the postmaster at that location. He was told that there was no work available/no job for him at the Millford Post Office.

The claimant then proceeded to seek work at other Delaware post offices by asking for a job from the postmaster at each location. He was not able to locate work until he asked the Postmaster at the Georgetown, Delaware Post Office, Karen Crede.

He earned \$19.00 per hour at both locations and did not receive health insurance at either location. The claimant quit his employment.

### **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 he 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 the case at bar, that burden has not been met.

Under Maryland Law only a cause directly attributable to the employer can constitute good cause for quitting. The claimant's reason for leaving was personal in nature.

The claimant was present at the hearing but his credibility was called into question. First the claimant testified that he had received a transfer to Milford, Delaware. Then, he testified that, when he arrived at the Milford Post Office, there was no position available for him. He then proceeded to testify that, to try to obtain a position at another post office, he went to each post office location and spoke with each postmaster. Each postmaster in each location had the power to hire him if they had a position available. He did not find a position available until he spoke with the postmaster at the Georgetown Delaware Post Office.

By his own testimony, he would have had to speak to the postmaster at a particular location as that individual had the power to hire him. Paperwork is not done by a postmaster in one location attempting to get a transfer to another location for one (1) of their employees. The claimant was not credible in stating that he had a position in Milton, Delaware because, when he spoke to the postmaster in Milton, Delaware following his move to that geographical area, the Milton Post Office Postmaster said there was no position available. The claimant had not spoken with this Milton Delaware postmaster prior to his move to that area and had not been transferred to the Milton, Delaware Post Office.

The claimant quit his employment to move closer to family. This was not a necessitous or compelling reason to quit his employment. The claimant quit his employment 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 October 14, 2012 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.

*N Grimes*

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N Grimes, 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 January 30, 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 : January 04,2013  
CH/Specialist ID: UTW3H  
Seq No: 003  
Copies mailed on January 15, 2013 to:  
SCOTT J. WOLK  
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