



Maryland

Department of Economic & Employment Development

William Donald Schaefer

Governor

Mark L. Wasserman

Secretary

Board of Appeals

1100 North Eutaw Street

Baltimore, Maryland 21201

Telephone: (410) 333-5032

Thomas W. Keech, Chairman

Hazel A. Warnick, Associate Member

Donna P. Watts, Associate Member

- DECISION -

Decision No.: 1131-BR-93

Date: June 25, 1993

Claimant: Dora Thomas

Appeal No.: 9221977

S.S. No.:

Employer: Deaton Hosp. & Med. Ctr.

L. O. No.: 1

Appellant: EMPLOYER

Issue: Whether the claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article.

- 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 appeal can be found in many public libraries, in the *Annotated Code of Maryland, Maryland Rules*, Volume 2, B rules.

July 25, 1993

The period for filing an appeal expires

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. The Board makes the additional finding of fact that the claimant did not punch out on the time clock when she left to go to the

dentist. Based upon all the facts of this case, the Board of Appeals determines that a different conclusion of law is warranted.

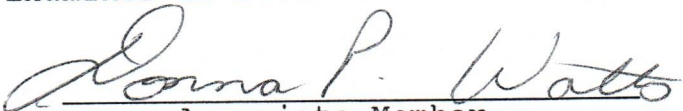
Section 8-1002 of the Labor and Employment Article defines gross misconduct as conduct of an employee that is a deliberate and willful disregard of standards of behavior that an employing unit rightfully expects and that shows gross indifference to the interests of the employing unit or repeated violations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

The claimant's action amounts to gross misconduct as defined in §8-1002 of the Labor and Employment Article. Leaving the work place without punching out on the time clock is a falsification of work records, which constitutes gross misconduct.

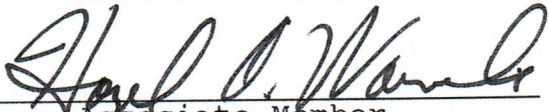
DECISION

The claimant was discharged for gross misconduct, connected with the work, as defined in §8-1002 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning September 24, 1992 and until she becomes reemployed, earns ten times her weekly benefit amount (\$2230.00) and thereafter becomes unemployed through no fault of her own.

The decision of the Hearing Examiner is reversed.



Associate Member



Associate Member

kmb

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501
1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: (410) 333-5040

- REMAND -
- DECISION -

Claimant: Dora Thomas
Date: Mailed: 4/26/93
Appeal No.: 9221977
S. S. No.:
Employer: Deaton Hospital & Medical Center
L.O. No.: 1
Appellant: Employer

Issue: Whether the claimant was discharged for gross misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1002.

- NOTICE OF RIGHT OF FURTHER APPEAL -

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

May 11, 1993

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

NOTICE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL, ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK.

- APPEARANCES -

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Ann Mackin,
Personnel Assistant

PREAMBLE

This is a remanded case from the Board of Appeals dated February 1, 1993.

FINDINGS OF FACT

The claimant worked for the employer from April 10, 1989 to September 24, 1992 as a health care assistant and made \$6.28 an hour.

On September 23, 1992, the claimant appeared for her 3:00 p.m. to 11:30 p.m. shift at approximately 2:45 p.m. However, at 2:45. p.m. when she punched in, her tooth had bothered her considerably and was giving her grievous pain. She decided to seek help and left the hospital to go to a dentist across the street and have the tooth extracted. Prior to leaving to go to the dentist she notified a security guard friend of hers who notified a supervisor indicating that the claimant would be late due to this extreme emergency. Finally returning from the dentist at approximately 4:00 p.m., she confronted her supervisor, who stated that she had left the employer's establishment after punching in and this was a violation of the employer's handbook and the claimant was discharged on the spot.

There was no other evidence presented at the hearing which would indicate that the claimant had committed any other act except misconduct during her time of employment there.

CONCLUSIONS OF LAW

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 the Maryland Code, Labor and Employment Article, Title 8, Section 1003. (See Rogers v. Radio Shack 271 Md. 126, 314 A.2d 113).

In the instant case, the claimant after punching in for work at 2:45 p.m., had to go to a dentist due to a toothache. She, herself did not notify her supervisor that she was leaving, but had someone else notify the supervisor. The employer had met its burden of proof to indicate that the claimant had committed a violation of the employee handbook by actually punching her time card to indicate that she was in, but in effect she was not in or working at that particular time. No other indication of misconduct was proven or alleged by the employer as to the claimant.

DECISION

It is held that the claimant was discharged for misconduct connected with the work, within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 1003. Benefits are denied for the week beginning September 24, 1992 and for the four weeks immediately following.

The determination of the Claims Examiner is reversed.

Robert A. Breschi

Robert A. Breschi
Hearing Examiner

Date of Hearing: April 2, 1993
lr/Specialist ID: 1062
Cassette No: Hearing Cassette in File
Copies mailed on April 26, 1993 to:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

Board of Appeals