

 **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

- D E C I S I O N -

	Decision No.:	1431-BR-93	
	Date:	August 20, 1993	
Claimant:	Shirley Andreski	Appeal No.:	9309426
		S.S. No.:	
Employer:	Crofton Convalescent Ctr. ATTN: Nancy Mitchell	L. O. No.:	8
		Appellant:	CLAIMANT
Issue:	Whether the claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 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.

The period for filing an appeal expires

September 19, 1993

- A P P E A R A N C E S -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

The claimant, a nurse, was fired for an accumulation of job deficiencies in the performance of her work. Most of these deficiencies were in the form of documentation errors. The claimant was warned of the seriousness of these errors, but the errors continued. The claimant was then removed from most of her documentation duties. Subsequently, the claimant administered the wrong medication to a patient through an IV. She was attempting to perform her job, but she was not as careful as she should have been.

The claimant made none of these mistakes deliberately, and she was not grossly negligent, but she was not as careful in her job duties and she should have been, especially after her previous warnings. Although mere incompetence is not misconduct, there was a degree of negligence in the claimant's conduct which amounts to misconduct. The claimant's actions, however, were neither deliberate acts, nor did they show a willful and wanton disregard of her obligations. Therefore, a finding of "gross misconduct" under §8-1002 is not appropriate.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Section 8-1003 of the Labor and Employment Article. She is disqualified from receiving benefits from the week beginning March 28, 1993 and the nine weeks immediately following.

This penalty may also disqualify the claimant from receiving federal extended benefits, unless the claimant has been employed after the date of this disqualification.

The decision of the Hearing Examiner is reversed.

Thomas W. Keech
Chairman

Donna P. Watts
Associate Member

K:D
kmb
COPIES MAILED TO:

CLAIMANT

EMPLOYER

Barbara Edin, Esquire



Maryland

Department of Economic & Employment Development

*William Donald Schaefer, Governor
Mark W. Wasserman, Secretary*

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

*Room 511
1100 North Eutaw Street
Baltimore, Maryland 21201*

Telephone: (410) 333-5040

— D E C I S I O N —

Date: June 19, 1993

Claimant: Shirley E. Andreski Appeal No: 9309426

S. S. No.:

Employer: Crofton Convalescent Ctr. Inc. L.O.No.: 08

Appellant: Claimant

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

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW 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

7/6/93

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

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

— A P P E A R A N C E S —

FOR THE CLAIMANT:

PRESENT, accompanied by
Richard Andreski
Richard Neuwirth, Esq.

FOR THE EMPLOYER:

Nancy Mitchell
Dir. Of Nursing

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Annapolis, effective March 28, 1993.

The claimant had been employed by Crofton Convalescent Center, Incorporated for four and a half years in the last position as staff nurse, LPN, at a pay rate of \$15.35 per hour.

The claimant was discharged for negligence in the performance of her duties.

The employer had documented a series of errors committed on the part of the claimant since November, 1991, which were primarily recording and documentation errors. The claimant had failed to note doctors' orders in a proper manner, failed to communicate with families of patients and other responsibilities as a charge nurse.

Other irregularities were noted by the employer in June, 1992 involving complaints of patients or failing to properly chart or properly document a dentist's visit to a patient.

On or about October 29, 1992, the employer decided to remove the claimant from her responsibilities for documentation as charge nurse. However, she continued to perform her other duties.

The employer learned that the claimant had on March 27, 1993 given a patient the wrong antibiotic IV. It was determined that the patient was to have received a particular IV in the evening and a different one on the following morning. The claimant had given the patient the morning IV in the evening, and the other IV was still in the medicine cabinet. The claimant had assumed that all the IV's were the same. There was no ill effect to the patient, but clearly the claimant had administered the wrong medication.

Pursuant to that incident, the employer then began to review the claimant's work history. The claimant was due for a regular annual evaluation on March 30, 1993. Upon reviewing her prior performance, without specifically considering the last incident of improper administration of medication, the employer decided to terminate the claimant for failing to properly perform the duties of a charge nurse in particularly, and secondarily, due to the events of March 27, 1993.

The claimant asserts that a supervisor was present at the time when she was administering the IV to the patient. However, the supervisor was called only to assist in correcting the flow of the IV. The supervisor was not requested, nor did the supervisor determine whether the correct medication was being administered, as this was the specific responsibility of the claimant.

CONCLUSIONS OF LAW

Upon weighing and reviewing the testimony presented, I conclude that the claimant was discharged for gross misconduct, connected with her employment, within the meaning of the Labor and Employment Article, Title 8, Section 1002.

The claimant had been derelict in the performance of her duties, first as a full charge nurse, and second, after certain responsibilities were taken from her. The fact that no harm or

ill-effect occurred to a patient does not minimize the negligence in administering the wrong antibiotic IV as ordered by a physician. The claimant admitted that she made an assumption that all the IV she discovered in the medicine cabinet was the same, when in fact, it was not all the same.

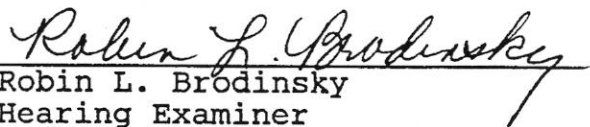
Accordingly, I conclude that the employer has presented with substantial probative evidence or testimony that the claimant's conduct was negligent, and that said negligence and failure to perform all the duties and functions of the jobs for which she was responsible constitutes a deliberate and willful disregard of the standards of behavior which the employer has a reasonable right to expect, showing gross indifference to the employer's interest.

Accordingly, I find no basis to disturb the determination of the Claims Examiner.

DECISION

The claimant was discharged for gross misconduct, connected with her employment, within the meaning of the Labor and Employment Article, Title 8, Section 1002. Benefits are denied for the week beginning March 28, 1993, and until the claimant becomes reemployed and earns at least twenty times her weekly benefit amount, and thereafter becomes unemployed through no fault of her own.

The determination of the Claims Examiner is affirmed.


Robin L. Brodinsky
Hearing Examiner

Date of Hearing: 6/15/93
SPECIALIST ID: 08003
ab\CASSETTE IN FILE
SEQ: 01

Copies mailed on 6/19/93 to:
Claimant
Employer
Unemployment Insurance - Annapolis (MABS)

Richard Neuworth, Esq.