

**- DECISION -**

Claimant:  
RICHARD A MINER

Decision No.: 1889-BR-13

Date: May 8, 2013

Appeal No.: 1304635

Employer:  
M D R SERVICES INC

S.S. No.:

L.O. No.: 63

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: June 7, 2013

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**REVIEW OF THE RECORD**

After a review of the record, and after deleting "or about" from the first sentence of the second paragraph, the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

When the employer told the claimant he could get out if he did not like the way things were, the claimant believed he had been discharged.

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 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 voluntarily quit can be manifested by words or actions. "Due to leaving work voluntarily" has a plain, definite and sensible meaning, free of ambiguity. 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 and of his or her own free will, terminated the employment. *Allen v. Core Target Youth Program, 275 Md. 69 (1975)*. A claimant's intent or state of mind is a factual issue for the Board of Appeals to resolve. *Dept. of Econ. & Empl. Dev. v. Taylor, 108 Md. 250(1996)*, *aff'd sub. nom., 344 Md. 687 (1997)*. An intent to quit one's job can be manifested by actions as well as words. *Lawson v. Security Fence Supply Company, 1101-BH-82*. A resignation submitted in response to charges which *might* lead to discharge is a voluntary quit. *Hickman v. Crown Central Petroleum Corp., 973-BR-88*.

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*.

The Board concludes the claimant was discharged. The evidence, here, is strikingly similar to that in *Dei Svaldi*, above. The claimant had no intent to quit this employment. He only left when he was told he could "get out" if he did not like things. The claimant interpreted this to mean he was discharged and acted accordingly. The Board finds this interpretation of the employer's statement to have been reasonable.

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). 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).

In his appeal, the claimant contends he, "...was caught off guard with the lies and manipulation of events." He also contends he, "...did not respond well and [was] a bit confused at times." The claimant does not specify what he believes was untruthful or what he thinks was manipulated. The claimant does not make any other 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 credibly established that he was discharged when his supervisor told him to get out. He did not intend to quit and did not quit.

The employer did not present sufficient evidence to allow a finding that the claimant was discharged for any degree of misconduct. The argument between the claimant and his supervisor was the result of a recurring disagreement between the two individuals. The claimant was not insubordinate and not unreasonable. The Board cannot find, from the competent evidence in the record, the claimant's discharge to have been for disqualifying misconduct.

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 within the meaning of § 8-1002. The employer has also not met its burden of showing that the claimant's discharge was for misconduct within the meaning of § 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 M D R SERVICES INC.

The Hearing Examiner's decision is reversed.



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Donna Watts-Lamont, Chairperson



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Eileen M. Rehrmann, Associate Member

VD/mw

Copies mailed to:

RICHARD A. MINER

M D R SERVICES INC

M D R SERVICES INC

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

RICHARD A MINER

SSN #

**Claimant**

vs.

M D R SERVICES INC

**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: 1304635

Appellant: Employer

Local Office : 63 / CUMBERLAND

CLAIM CENTER

March 19, 2013

**For the Claimant:** PRESENT

**For the Employer:** PRESENT, PAMELA LEADBETER

**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**

Claimant, Richard A. Miner, filed a claim for benefits establishing a benefit year beginning, January 6, 2013, and qualified for a weekly benefit amount of \$355.00.

Claimant began working for employer, MDR Services Inc., on or about November 1, 2010. At the time of separation claimant was working full time as a tow truck driver. Claimant last worked for employer on January 7, 2013 before quitting under the following circumstances:

At the time of separation, claimant was working full time as a tow truck driver. Ms. Leadbeter and her

husband owned and jointly supervised two businesses, MDR and Towing and Storage.Com LLC, both of which offered, among other things, towing services. When claimant worked for MDR, most of the time he was under the supervision of the husband, but worked with Ms. Leadbeter as well. .

On about May 29, 2012, claimant was transferred to Towing and Storage.Com LLC, as a tow truck driver and was supervised most of the time by Ms. Leadbeter. Claimant and Ms. Leadbeter had a tenuous business relationship and often disagreed on a variety of matters.

On January 7, 2013, Ms. Leadbeter was under a lot of pressure and was very strident and ill-tempered with all of her employees, including claimant. She yelled at claimant and told him, among other things, he was not completing his work on time. Claimant told Leadbeter he was working to the best of his ability, but Leadbeter continued to be aggressive and impatient.

At one point on the 7<sup>th</sup>, claimant went to Leadbeter's office and asked why she was treating him in such a disrespectful manner. Ms. Leadbeter responded that if he did not like what was going on he could get out. Claimant handed in his keys, left the premises and did not return to work.

### **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.

Claimant had the burden to show, by a preponderance of the evidence, that the quit was 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 this case, this burden has not been met.

Claimant testified that he thought he was terminated when Leadbeter told him to get out.

Claimant stated that he sent the husband a text the same day asking him what was going on. Per claimant, husband told him his wife had made her decision and that he could not return to work.

Ms. Leadbeter gave claimant a choice, to do his job and deal with her or leave. Claimant quit when he chose to leave the premises instead of going back to work. The fact that the husband told claimant he could not return to work did not mean that he had been fired.

Claimant quit because he did not like the way Ms. Leadbeter treated him, in general, which came to a head on January 7, 2013. The claimant was not singled out, but Leadbeter treated all of her employees the same way. The fact that claimant did not agree with Ms. Leadbeter's style of management was not a material change to the conditions of his employment affording him good cause to quit.

Claimant did not articulate a compelling, necessitous and personal reason for quitting within the meaning of valid circumstances.

It is thus determined that claimant has failed to demonstrate that the reason for quitting rises to the level necessary to demonstrate good cause or valid circumstances within the meaning of the sections of law cited above.

### 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 January 6, 2013 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.



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B H Woodland-Hargrove, 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 April 03, 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: March 01, 2013  
DAH/Specialist ID: WCU17  
Seq No: 001  
Copies mailed on March 19, 2013 to:  
RICHARD A. MINER  
M D R SERVICES INC  
LOCAL OFFICE #63