

 **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

Board of Appeals
Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

— DECISION —

	Decision No.:	2056-BR-92	
	Date:	Nov. 23, 1992	
Claimant:	Patricia A. Dugan	Appeal No.:	9214177
		S. S. No.:	
Employer:	Store, Ltd. ATTN: B. Cook, Owner	L. O. No.:	9
		Appellant:	EMPLOYER
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 ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

December 23, 1992

— 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. However the Board of Appeals concludes that these facts warrant a different conclusion of law.

The claimant was no longer able to work a full forty hour work week. The claimant was only able to work three hours a day, four days a week, due to her documented medical condition.

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).

The claimant's actions did not raise to the level misconduct. The claimant's inability to work forty hours a week were due to a medical condition which the claimant had no control over.

DECISION

The claimant was discharged, but not for any misconduct, connected with the work, within the meaning of §8-1003 of the Labor and Employment Article. No disqualification from the receipt of benefits shall be imposed under this section of the law.

The decision of the Hearing Examiner is reversed.



Associate Member



Associate Member

kmb

COPIES MAILED TO:

CLAIMANT
EMPLOYER
UNEMPLOYMENT INSURANCE - TOWSON

 **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
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Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Claimant:	Patricia A. Dugan	Date:	Mailed: 10/2/92
		Appeal No.:	9214177
		S. S. No.:	
Employer:	Store, Ltd.	L. O. No.:	9
		Appellant:	Employer

Issue: Whether the claimant was discharged for misconduct connected with the work, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1003.

— 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.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

October 22, 1992

NOTE: 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:

Betty Cooke,
Owner,
Pat Fessler,
Bookkeeper

FINDINGS OF FACT

The claimant worked as a manager/buyer of gifts and accessories for Store Limited from February 19, 1991 until March 10, 1992, earning a wage of \$25,000 per year.

The claimant accepted the job, agreeing to work forty hours per week including Saturdays. She worked the agreed upon hours until late May 1992, when she was injured in a car accident and developed back problems. The claimant documented her medical condition with letters from her physician. She gave these medical documentations to the employer. The claimant's physician authorized her to work only four days per week, three hours per day. The employer tried to cooperate with the claimant and help her during this period. Store meetings and discussions were held to accommodate both the claimant's reduced hours and the employer's need for a full-time employee. In the employer's business the biggest sales days are Saturdays. The claimant could not work on Saturdays, after her back injury.

When the claimant was hired, the employer told the claimant that Saturday was the peak day of the sales week. The employer could not afford a part-time employee who was not available full-time on Saturdays. The claimant offered to work on a part-time basis. However, the claimant's reduced hours affected the employer's business. The hours were not flexible enough to meet the employer's needs.

The claimant went to London on March 10, 1992. She returned from England on April 23, 1992, expecting to return to work on April 24, 1992. She called Betty Cooke on April 24, 1992 and several times up until May 15, 1992 about returning to work. After the claimant returned from her vacation in England, Mrs. Cooke did not place her back on the work schedule.

CONCLUSIONS OF LAW

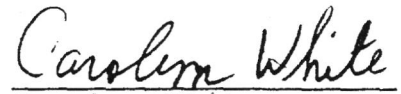
The term "misconduct," as used in the Statute means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee within the scope of his employment relationship, during hours of 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).

The claimant's reduction of hours from forty to twelve per week, constitutes misconduct.

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 March 8, 1992 and for the nine weeks ending May 16, 1992.

The determination of the Claims Examiner is affirmed.



Carolyn White
Carolyn White
Hearing Examiner

Date of Hearing: August 25, 1992
lr/Specialist ID: 09659
Cassette No: Hearing Cassette in File
Copies mailed on October 7, 1992 to:

Claimant
Employer
Unemployment Insurance - Towson (MABS)