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STATE OF MARYLAND

DEPARTMENT OF LABOR, LICENSING AND REGULATION

PARRIS N. GLENDENING, Governor

EUGENE A. CONTI, JR., Secretary

Board of Appeals

Hazel A. Warnick, Chairperson

- DECISION -

Claimant:

JEFFREY L. BEARD

Employer:

C T MGMT INC

Decision No.: 02061-BR-97

Date: June 23, 1997

Appeal No.: 9706131

S.S. No.:

L.O. No.: 93

Appellant: Claimant

Issue: Whether the claimant was discharged for misconduct or gross misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 8-1002 or 1003.

- 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: July 13, 1997

REVIEW ON THE RECORD

The Board adopts the findings of fact of the hearing examiner, but reaches a different conclusion of law. The Board notes that the claimant, duly notified of the date time and place of the hearing failed to appear. The Board's decision is based upon the credible, unrefuted evidence presented in the record by the employer.



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.

When an employee does not report or call into work, a single incident may only constitute simple misconduct. However, the Board views as a grave matter incidents where an employee violates the employer's attendance policies on more than one recent occasion by not calling or reporting into work.

In the instant case, the Board finds that when the claimant, in the face of warning, did not properly justify his final absence with a required doctor's note, he was terminated for actions ^{which} with evince a total disregard for the standard of behavior that his employer had the right to expect, and was a repeated violation of the employer's attendance policy rising to the level of gross misconduct.

DECISION

The claimant was discharged for gross misconduct, connected with the work, within the meaning of §8-1002 of the Labor and Employment Article. He is disqualified from receiving benefits from the week beginning January 26, 1997 and until he becomes reemployed, earns at least twenty times his weekly benefit amount (\$3280) and thereafter becomes unemployed through no fault of his own.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr., Associate Member



Hazel A. Warnick, Chairperson

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Copies mailed to:
JEFFREY L. BEARD
C T MGMT INC
Local Office - #93

UNEMPLOYMENT INSURANCE APPEALS DECISION

JEFFREY L. BEARD

Before the:

SSN :

Claimant

vs.

C T MGMT INC

Employer/Agency

**Maryland Department of Labor,
Licensing and Regulation
Appeals Division**
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 767-2421

Appeal Number: 9706131
Appellant: Employer
Local Office: 93 / Landover

April 21, 1997

For the Claimant:

For the Employer: PRESENT, FRAN BENNETT, JIM STEWART

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 began working for this employer in March 1996 and his last day of work was January 27, 1997. He was employed as a maintenance man at the Belle Haven Apartments at a salary of \$8.25 per hour.

The claimant was discharged on January 27, 1997 because of chronic lateness and excessive absenteeism. The employer had a company policy that provided a 90-day period three or more days of absence was to be considered excessive and would be grounds for termination. The claimant was aware of this policy. Between July 23, 1996 and January 27, 1997, the claimant was absent ten days without notifying his supervisor which was also required under the employer's policy. On January 21, 1997 the claimant was given a written warning with regard to his chronic tardiness and absenteeism

and which advised him that he had seven days absent within the last 90 day period. On January 27, 1997, after receiving his paycheck, the claimant advised his supervisor that he felt sick and that he had to go home. Claimant was again advised about his prior warning and that he would have to bring in a doctor's note if he left work for illness. The claimant came in the next day without the doctor's note and was terminated.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994) provides for a disqualification from benefits where the claimant is discharged (or suspended) as a disciplinary measure for acts connected with the work which the Secretary determines to be misconduct. The term "misconduct" is undefined in the statute but has been judicially defined as "...a transgression of some established rule or policy, 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." Rogers v. Radio Shack, 271 Md. 126, 132, 314 A.2d 113 (1974).

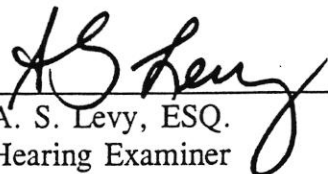
EVALUATION OF EVIDENCE

The testimony provided by the employer at the hearing was sufficient to conclude that the claimant's actions amounted to misconduct under the provisions of Section 8-1003.

DECISION

IT IS HELD THAT the claimant was discharged for misconduct connected with the work within the meaning of Md. Code Ann., Labor & Emp., Section 8-1003 (Supp. 1994). Benefits are denied for the week beginning (Sunday) January 26, 1997 and for the nine weeks immediately following.

The determination of the claims examiner is reversed.



A. S. Levy, ESQ.
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Labor, Licensing and Regulation, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by May 6, 1997.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: April 11, 1997

THJ/Specialist ID: 93181

Seq. No.: 001

Copies mailed on April 21, 1997 to:

JEFFREY L. BEARD
C T MGMT INC
LOCAL OFFICE #93