

 **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

- D E C I S I O N -

Claimant:

GERALDINE A. BUSH

Employer:

BECTON DICKINSON & CO

Decision No.: 02084-BR-94

Date: June 17, 1994

Appeal No.: 9406563

S.S. No.:

L.O. No.: 09

Appellant: Claimant

Issue: Whether the claimant was discharged for gross misconduct or misconduct connected with the work within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 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 17, 1994

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 but finds that they warrant a different conclusion.

In this case, the claimant, who is a single parent, has two children of which one has a mental disorder. This child was diagnosed with organic mental disorder, mild mental retardation, and depression. The child would not sleep unless the claimant was with her, many times would not get up and get dressed for school and would display anger and physical aggression toward members of her family. The claimant had no assistance available to her for preparing the children for school. She was responsible for dropping the children at their destinations. When the mentally afflicted child was vehemently uncooperative, there were occasions where the claimant became absent or late for work. These situations were not in the claimant's control.

A physician subsequent to her termination has discovered the drug that has relieved many of the symptoms of the claimant's child.

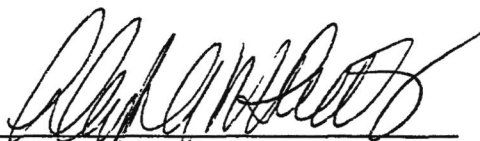
In making a determination of gross misconduct the finder of fact must not look simply for substandard conduct, but for a willful and wanton state of mind accompanying the engaging in substandard conduct. Where conduct evinces an utter disregard of an employee's duties and obligations to the employer and is calculated to disrupt the discipline and order requisite to the proper management of a company, a finding of gross misconduct is supported. Employment Security Board v. LeCates, 2,18 Md. 202 145A. 2d 840 (1958). In this case the claimant did not willfully and wantonly violate the employer's rules. Therefore, the Board finds that her actions do not rise to the level of gross misconduct.

The claimant did, however, violate the attendance policy with regularity, even though she had a mitigating reason. In this regard, the Board concludes that the claimant's actions do rise to the level of misconduct.

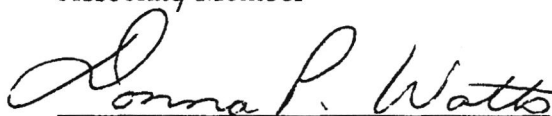
DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of Maryland Labor and Employment Article, Section 8-1003. Benefits are denied the week beginning March 13, 1994 and for the four weeks immediately following.

The decision of the Hearing Examiner is reversed.



Clayton A. Mitchell, Sr.
Associate Member



Donna P. Watts, Associate Member

km

Copies mailed to:

GERALDINE A. BUSH
BECTON DICKINSON & CO
Local Office - #09

UNEMPLOYMENT INSURANCE APPEALS DECISION

GERALDINE A. BUSH

Before the: .

SSN #

Claimant

vs.

BECTON DICKINSON & CO

Employer/Agency

**Maryland Department of Economic and
Employment Development**

Appeals Division

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 333-5040

Appeal Number: 9406563

Appellant: Claimant

Local Office: 09 / Towson

May 3, 1994

For the Claimant: PRESENT

For the Employer:

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 1002 -1002.1 (Gross/Aggravated Misconduct connected with the work) or 1003 (Misconduct connected with the work).

FINDINGS OF FACT

The claimant was employed by Becton Dickinson & Company from March 26, 1990 until March 16, 1994. She was earning \$21,000 annually performing customer service functions. The claimant was discharged by the employer for repeated latenesses reporting to work. This lateness continued after numerous warnings and after several suspensions. The claimant's last written warning placed her probation from January 15, 1994 and informed her that if she was late during that period she could be terminated. After being placed on probation, the claimant was late on eleven occasions and absent on three. When the claimant was reviewed to see how her performance was during the probationary period, she was terminated effective March 16, 1994.

The claimant has a difficult situation. "She has a child who suffers from what has been diagnosed as a mental disorder and mild mental retardation. This child had to be made ready for school in the morning and causing the claimant to be frequently late. The claimant is a single parent and has no assistance in getting the child ready for school.

The claimant was aware of the employer's requirements so when she took the job and had an obligation to meet those requirements. The claimant was given many opportunities by the employer and was placed on probation a number of times and warned a number of times and still did not meet the requirements of her job.

CONCLUSIONS OF LAW

Gross misconduct as it applies to this case is defined as a repeated violation of employment rules showing that the claimant has regularly and willful disregarded obligations to the employer.

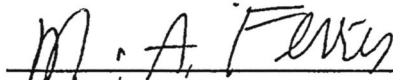
The issue is whether the claimant's conduct in this case comes within that definition. The claimant urges that her actions were not willful and deliberate because they were brought on by her own personal situation and her child's need.

Ordinarily that might be accepted, but in this case, the employer was so long suffering and gave the claimant so many opportunities that it must be held that the claimant actions were deliberate and willful. The claimant has, since being terminated, taken some steps and gotten medication for her child which makes it possible for her to get the child ready in the morning. The employer had given her every opportunity to do that during her work time and the claimant had been unsuccessful for one reason or another. In any event, she had not been able to work out the arrangements where she could meet the agreement she had made to report to work on time when she was hired and the requirements of the employer and the many chances the employer gave her to meet those requirements. Therefore it is found that the claimant was discharged for gross misconduct connected with her work within the meaning of Section 1002 of Title 8 of the Maryland Code.

DECISION

The claimant was discharged for gross misconduct connected with her work within the meaning of the Maryland Code, Labor and Employment Article. Title 8, Section 1002. She is disqualified from receiving unemployment insurance benefits for the week beginning March 13, 1994 and until she becomes reemployed, 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.



M. A. Ferris, ESQ
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which maybe filed in any local office of the Department of Economic and Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by May 18, 1994

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

Date of hearing: April 20, 1994
TE/Specialist ID: 09700
Seq. No. :002
Copies mailed on May 3, 1994 to:

GERALDINE A. BUSH
BECTON DICKINSON & CO
LOCAL OFFICE #09